POWELL, GOLDSTEIN, FRAZER & MURPHY LLP

ATTORNEYS AT LAW

Sixteenth Floor 191 Peachtree Street, N.E. Atlanta, Georgia 30303 404 572-6600 Facsimile 404 572-6999 www.pgfm.com
PLEASE RESPOND: Washington Address

Sixth Floor 1001 Pennsylvenia Avenue, N.W. Washington, D.C. 20004 202 347-0066 Facsimile 202 624-7222

Direct Dial: 202-624-7330 E-mail: bkappel@pgfm.com

September 28, 1998

VIA HAND DELIVERY

Lawrence W. Noble General Counsel Federal Election Commission 999 E Street, N.W. Washington, D.C. 20463

Re: MURs 4322 and 4650

Dear Mr. Noble:

Enclosed for filing in the above-referenced matters, please find three (3) copies of the briefs of Enid Greene, D. Forrest Greene, Enid '94 and Enid Greene, as treasurer, and Enid '96 and Enid Greene, as treasurer, in opposition to the Office of General Counsel's recommendation to the F.E.C. Ten (10) copies of these briefs are being filed simultaneously with the Secretary of the Commission.

Sincerely,

Charles H. Roistacher

Brett G. Kappel

For Powell, Goldstein, Frazer & Murphy LLP

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of				
	Rs 4322 and 4650			
Enid Greene	4			
Dunford Forrest Greene				
	, E			
	Č.			
BRIEF OF RESPONDENT D. FORREST GREENE IN OPPOSITION TO				
PROBABL	DATION			

Charles H. Roistacher
Brett G. Kappel
POWELL, GOLDSTEIN, FRAZER & MURPHY LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phane: (202) 347,0066

Phone: (202) 347-0066 Fax: (202) 624-7222

Counsel to D. Forrest Greene

TABLE OF CONTENTS

I.	INT	RODUCTION	1	
II.	BAC	KGROUND AND PROCEDURAL HISTORY	7	
	A.	Prior Criminal Investigation	8	
	B .	Procedural History of FEC Investigation	16	
III.	SCIE	ENTER ELEMENT OF SECTION 441f VIOLATION	19	
IV.	D. F	ORREST GREENE DID NOT KNOWINGLY VIOLATE SECTION 441f	25	
	A .	D. Forrest Greene Was Not Aware that Funds He Provided to Joseph P. Waldholtz Were Used by Joseph P. Waldholtz to Make Contributions to Enid '94 in the Name of Enid Greene		
		1. Personal Loans	25	
		2. Asset Swap	27	
		3. Utah Fraud Suit		
	B.	The OGC's Probable Cause Recommendation Ignores Voluminous Evidence of Joseph P. Waldholtz's Uncanny Ability to Dupe Much More		
		Politically Astute Individuals Into Violating FECA		
		1. Elsie Hillman	38	
		2. Republican Party of Utah	39	
		3. Huckaby & Associates	40	
V.	CON	CLUSION	42	

TABLE OF AUTHORITIES

CASES

	-
AFL-CIO v. FEC, 628 F.2d 97 (D.C. Cir.), cert. denied, 449 U.S. 982 (1980)	27
Baxter v. Palmigiano. 425 U.S. 308 (1976)	
FEC v. California Medical Ass'n. 502 F. Supp. 196 (N.D. Cal. 1980) ————————————————————————————————————	~~~~~~ <u>~</u>
FEC V. Christian Action Network, Inc., 110 F.3d 1049 (4 Cit. 1997). FEC V. Democratic Senatorial Campaign Committee, 454 U.S. 27, 34 (1981)	
FEC v. Dramesi for Congress Committee, 640 F. Supp. 985 (D.N.J. 1986)	
FEC v. Rodriguez. No. 86-687 Civ-T-10(B) (M.D. Fla. May 5, 1987) (unpublished order)	_ 77 73
Hughes Tool Co. v. Meier, 489 F. Supp. 354 (D. Utah 1977)	- 22. 2.
In re Federal Election Campaign Act Litigation, 474 F. Supp. 1044 (D.D.C. 1979)	
Mid-America's Process Service v. Ellison, 767 F.2d 684 (10th Cir. 1985)	3 :
National Right to Work Committee, Inc. v. FEC, 716 F.2d 1401 (D.C. Cir. 1981)	2
United States v. Chestnut, 533 F.2d 40 (2nd Cir. 1975)	23
MATTERS UNDER REVIEW	
MUR 3929	6 39
WOR 3727	0. 50
STATUTES	
2 U.S.C. § 437g	2!
2 U.S.C. § 437g(a)(6)	
2 U.S.C. § 437g(a)(12)(A)	
2 U.S.C. § 437g(d)	1
2 U.S.C. § 438(d)	
2 U.S.C. § 441a	
2 U.S.C. § 441a(a)(1)(A)	passin
2 U.S.C. § 441a(a)(3)	
2 U.S.C. § 44[f	
18 U.S.C. § 1001	
18 U.S.C. § 1344	
18 U.S.C. § 614	
26 U.S.C. § 7206(2)	
28 U.S.C. § 2412(d)(1)(A)	2. 7
Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101(f)(1), 88 Stat. 1263, 1268	
(1974)(codified at 18 U.S.C. § 614)	
Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475, 494 (1976)(codified	
U.S.C.§ 4410	23

REGULATIONS

1 C.F.R. § 110.4
1 C.F.R. § 110.4
1 C.F.R. § 110.4(b)(1)(i)2
1 C.F.R. § 110.4(b)(1)(ii)
1 C.F.R. § 110.4(b)(1)(iv)2
1 C.F.R. § 110.4(b)(2)(i)2
1 C.F.R. § 110.4(b)(2)(ii)2
1 C.F.R. § 110.4(b)(1)(ii)————————————————————————————————
OTHER AUTHORITIES
.R. Conf. Rep. No. 1057, 94th Cong., 2nd Sess. 67, reprinted in 1976 1974 U.S. Code Cong. & Admin. News 946, 982
Gross and K. Hong. Defending Prosecutions Under FECA: Drawing the Criminal/Civil Line in White Collar
Crime 1998 D-7 to D-8 (ABA-CLE 1998)2
Conf. Rep. No. 1237, 93rd Cong., 21rd Sess. 60, reprinted in 1974 U.S. Code Cong. & Admin. News 5618, 5629 2

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
)	MURs 4322 and 4650
Enid Greene)	
Dunford Forrest Greene	j	

BRIEF OF RESPONDENT D. FORREST GREENE IN OPPOSITION TO THE OFFICE OF GENERAL COUNSEL'S PROBABLE CAUSE RECOMMENDATION

I. INTRODUCTION.

On July 20, 1998, the General Counsel recommended that the Federal Election Commission (hereinafter "FEC" or "the Commission") find probable cause to believe that D. Forrest Greene violated 2 U.S.C. § 441f by making twenty-eight contributions in the name of Enid Greene to her 1994 campaign committee. Enid '94, and that, because of the amount of money involved in these alleged contributions, Mr. Greene also violated 2 U.S.C. § 441a(a)(1)(A) by making contributions in excess of \$1,000 per election and 2 U.S.C. § 441a(a)(3) by making more than \$25,000 in contributions in a single year. Counsel for D. Forrest Greene respectfully submit this brief in opposition to the General Counsel's probable cause recommendation. Counsel for D. Forrest Greene also represent Enid Greene, Enid '94, and Enid '96, and are simultaneously submitting briefs in opposition to the General Counsel's probable cause recommendations with regard to those individuals or entities.

The General Counsel's probable cause recommendation regarding D. Forrest Greene is not and cannot be supported as a matter of law or fact, and the Commission should reject it. After

an investigation that lasted more than a year, the General Counsel's recommendation is based entirely on a selective and, with regard to crucial facts, disingenuous reading of the depositions of D. Forrest and Enid Greene. The General Counsel's conclusion that there is probable cause to believe that D. Forrest Greene violated 2 U.S.C. § 441f (hereinafter "section 441f") amounts to nothing more than the General Counsel's subjective belief that a person of D. Forrest Greene's financial sophistication could not possibly have been bilked out of more than four million dollars by his son-in-law, Joseph P. Waldholtz. On the contrary, the evidence of Joseph P. Waldholtz's deception of D. Forrest Greene is so overwhelming that any finding of probable cause cannot be substantially justified. Accordingly, should the Commission follow the General Counsel's recommendation and proceed beyond the probable cause stage to seek civil penalties from D. Forrest Greene in federal court, counsel for D. Forrest Greene will seek attorneys' fees pursuant to the Equal Access to Justice Act.¹

The General Counsel reached this conclusion only by ignoring voluminous exculpatory evidence demonstrating that D. Forrest Greene was defrauded out of millions of dollars by Joseph P. Waldholtz and had no idea that those funds were subsequently contributed by Joseph P. Waldholtz to Enid '94 in the name of Enid Greene. Amazingly, the General Counsel simply ignored exculpatory statements Joseph P. Waldholtz made to the national media *just one month* before the General Counsel issued its probable cause recommendation. A June 10, 1998 article in The Hill stated that:

He [Waldholtz] said he knew that they would need more money than Enid could or would raise well before the 1994 election, and that's when he started his periodic calls to Enid's wealthy father. Forrest Greene, for 'loans' that he then funneled into their campaign – in violation of election law.

²⁸ U.S.C. § 2412(d)(1)(A). The courts have recognized that FEC enforcement actions under 2 U.S.C. § 437g(a)(6) are civil actions within the meaning of the Equal Access to Justice Act. See, e.g., FEC v. Christian Action Network, Inc., 110 F.3d 1049 (4th Cir. 1997).

Javers, Joe Waldholtz in Prison: Slimmer, Sober and Penitent, The Hill. June 10, 1998, at 36, col. 1 (emphasis added). (Exhibit A).

Similarly, a June 11, 1998 article in <u>The Salt Lake Tribune</u>, based on a five-hour prison interview with Joseph P. Waldholtz, contained the following exculpatory statement:

Desperate for money, Waldholtz claimed his family trust was tied up in litigation and looked elsewhere. He said he devised a transfer of cash to the campaign from Enid's millionaire father. D. Forrest Greene, in exchange for a bogus piece of Pittsburgh real estate. He convinced Enid it was legal on paper, and they approached Mr. Greene, who agreed.

Semerad, Waldholtz Is Ready to Tell His Side of Story, The Salt Lake Tribune. June 14, 1998 (emphasis added). (Exhibit B).

Nor was this the first time that Joseph P. Waldholtz admitted publicly that he and he alone was responsible for the multiple violations of section 441f that are the subject of MURs 4322 and 4650. Standing before U.S. District Judge Norma Holloway Johnson for sentencing for election fraud, Joseph P. Waldholtz stated:

This past year has been a nightmare for so many people: my family, my friends, my former wife [Enid Greene], and her family. To them, I would like to express my deepest regret and sorrow for my actions. My behavior was deplorable. And I alone am responsible. I did commit crimes against the United States. It is my responsibility and my responsibility alone.

Partial Transcript of Sentencing Proceedings at 1B-2 (emphasis added). (Exhibit C).

The General Counsel simply does not believe D. Forrest Greene's repeated assertions under oath that he was unaware that Joseph P. Waldholtz was contributing funds he had obtained from D. Forrest Greene by fraud to the Enid '94 campaign. General Counsel's Brief at 22. Yet nowhere in his brief does the General Counsel discuss – much less refute – the documentary evidence discovered and provided to the General Counsel's office by counsel for D. Forrest and Enid Greene that corroborates D. Forrest Greene's testimony that he was defrauded by Joseph P. Waldholtz.

Among the many documents that the General Counsel failed to discuss in his brief are three password-protected documents that were retrieved from Joseph P. Waldholtz's laptop computer after he fled to evade an FBI bank fraud investigation. Those three documents – shielded from discovery by the passwords "HELP," and "LIE" – establish conclusively that D. Forrest Greene was a victim of Joseph P. Waldholtz's elaborate plan to evade FECA's regulatory scheme by stealing millions from D. Forrest Greene and then contributing portions of those funds to Enid '94 in the name of Enid Greene. All of these documents were provided to the General Counsel months ago, long before the General Counsel issued his probable cause recommendation. Astonishingly, the General Counsel never even questioned D. Forrest Greene about any of these documents during his deposition.

Similarly, the General Counsel relegates to a footnote and then mischaracterizes the fraud suit that D. Forrest Greene successfully prosecuted against Joseph P. Waldholtz in a Utah state court. General Counsel's Brief at 4, n. 6. Rather than a suit for mere "misuse" of funds, D. Forrest Greene's complaint alleged that Joseph P. Waldholtz took advantage of the familial trust he enjoyed as a result of his marriage to Enid Greene and defrauded D. Forrest Greene out of nearly four million dollars. The Utah state court agreed, and granted summary judgment to D. Forrest Greene. The General Counsel failed to show any deference whatsoever to this prior court ruling – a ruling that negates entirely the General Counsel's subjective belief that D. Forrest Greene was a knowing participant in Joseph P. Waldholtz's criminal plan.

Finally, the General Counsel's probable cause recommendation rests, to a very large extent, on the fact that D. Forrest Greene never received documentation of the Asset Swap. General Counsel's Brief at 23. The General Counsel's representations in this regard are, at best, disingenuous and, at worst, border on misconduct. Enid Greene testified several times during

her deposition that she asked Joseph P. Waldholtz on many different occasions to provide documentation of the Asset Swap. Enid Greene Dep. at 195, 207-209, 211-212, 236-37.

And, in fact, in response to her demands, Joseph P. Waldholtz did indeed manufacture false documentation to demonstrate to both Enid and D. Forrest Greene that the Asset Swap had taken place. The elaborate ruse Joseph P. Waldholtz concocted to deceive both Enid and D. Forrest Greene about the Asset Swap was explained in detail in Enid and D. Forrest Greene's response to the Commission's reason to believe finding. Joint Response at 28-33. Moreover, the falsified documents Joseph P. Waldholtz manufactured in support of this ruse were provided to the General Counsel as exhibits to Enid and Forrest Greene's response. Exhibit Vol. 5, Tabs 2, 3, 4 and 5.

Not only did the General Counsel not question either D. Forrest or Enid Greene about these documents during their depositions, he tried repeatedly to prevent Enid Greene from testifying about them. Enid Greene Dep. at 209-210, 212-15, 218-19. The General Counsel even went so far as to attempt to prevent counsel for Enid Greene from eliciting relevant testimony from her about these documents. Enid Greene Dep. at 220-29. Despite the best efforts of the General Counsel, Enid Greene did indeed testify as to the documents Joseph P. Waldholtz manufactured to support his Asset Swap scheme. Enid Greene Dep. at 229-32. To base a probable cause recommendation to the Commission on a lack of documentation when, in fact, supporting documentation had been provided to the General Counsel on two separate occasions is simply outrageous.

Nor is the General Counsel's apparent willingness to ignore documentary evidence the only defect in the General Counsel's brief. The General Counsel finds it incredible that anyone with D. Forrest Greene's financial background could have been duped by Joseph P. Waldholtz

into making millions of dollars in unsecured personal loans, portions of which Joseph P. Waldholtz then channeled into Enid '94 in violation of FECA. General Counsel's Brief at 23. D. Forrest Greene's testimony is more than credible, however, once you know that Joseph P. Waldholtz has a long track record of defrauding individuals much more financially and politically sophisticated than D. Forrest Greene out of substantial sums of money and using those funds in violation of FECA. Indeed, the Commission has already seen ample evidence of Joseph P. Waldholtz's uncanny ability to manipulate elderly, wealthy individuals into unknowingly making illegal campaign contributions. In a matter eerily similar to the one presented here, Joseph P. Waldholtz caused his former employer, Mrs. Elsie Hillman, a member of the Republican National Committee, to violate FECA's prohibition on making more than \$25,000 in political contributions in any one year (2 U.S.C. § 441a(a)(3)) in three consecutive years – 1990, 1991 and 1992. In MUR 3929, Mrs. Hillman agreed to pay a \$32,000 civil penalty rather than contest her liability for Joseph P. Waldholtz's actions as her chief of staff.

Joseph P. Waldholtz's trail of politically sophisticated victims did not end with Mrs. Hillman. He embezzled nearly \$1,500 from the Utah Republican Party while he served as its executive director. That particular crime was never discovered by the state party, and only came to light when Enid Greene retained the accounting firm of Coopers & Lybrand to perform a forensic reconstruction of the bank accounts of Enid '94 and Joseph P. Waldholtz. Finally, and most importantly, Joseph P. Waldholtz was able to persuade one of the nation's premiere FEC accounting firms – Huckaby & Associates – to file not one, not two, but seven separate FEC reports on behalf of Enid '94 without any supporting documentation whatsoever.

None of these facts appear anywhere in the General Counsel's brief, despite the fact that D. Forrest and Enid Greene informed him of these and other misdeeds by Joseph P. Waldholtz in

their joint response to the Commission's reason to believe finding. Joint Response at 48-50: Exhibit Vol. 5, Tabs 14 and 15. The General Counsel was therefore aware of Joseph P. Waldholtz's track record of manipulating very sophisticated political operatives into making unknowing violations of FECA. He nevertheless chose to base his probable cause recommendation against D. Forrest Greene, in large part, on Mr. Greene's supposedly "incredible" inability to see through Joseph P. Waldholtz's machinations. Such behavior by the General Counsel is at least incompetent, if not outright misconduct.

The Commission is charged with determining whether there is probable cause to believe that D. Forrest Greene violated sections 441f, 441a(a)(1)(A), and 441a(a)(3). A determination that D. Forrest Greene violated section 441f is a necessary prerequisite to any determination that he also violated sections 441a(a)(1)(A) or 441a(a)(3). If the Commission does not believe that there is probable cause to believe that D. Forrest Greene violated section 441f by making a contribution in the name of another, then the Commission may not find that there is reason to believe that he violated either of the monetary limits on contributions. Any fair and objective evaluation of <u>all</u> the evidence that has been gathered in this case – including the exculpatory evidence the General Counsel chooses to ignore – will conclude that the General Counsel has failed to establish that there is probable cause to believe that D. Forrest Greene violated any of these provisions of FECA.

II. BACKGROUND AND PROCEDURAL HISTORY.

Enid Greene represented the Second District of Utah in the U.S. House of Representatives during the 104th Congress. Enid Greene's principal campaign committee in the 1994 congressional election was named Enid '94. Enid '96 was established to be Enid Greene's principal campaign committee in the 1996 congressional election, but on March 5, 1996,

Representative Greene announced that she would not run for re-election. D. Forrest Greene is a 79-year-old retired stockbroker residing in Salt Lake City. Utah, and the father of Enid Greene.

In the four years following the 1994 election, D. Forrest Greene has suffered from a number of physical and mental ailments.

Indeed, Mr. Greene forbade counsel from raising this issue at the time of his deposition. Enid Greene, however, explained her father's mental condition during her deposition. Enid Greene Dep. at 190.

Joseph P. Waldholtz -- Enid Greene's former husband and D. Forrest Greene's former son-in-law -- served as treasurer of Enid '94 from its inception on December 21, 1993 until November 14, 1995, when he was removed from that position by Enid Greene. Similarly, Joseph P. Waldholtz served as treasurer of Enid '96 from its inception on July 31, 1995 until November 14, 1995, when he was removed by Enid Greene. Accordingly, Joseph P. Waldholtz was the treasurer of both Enid committees at all times relevant to the above-referenced MURs.

A. Prior Criminal Investigation.

On November 1, 1995, the Capitol Hill newspaper The Hill reported that Joseph P. Waldholtz, the husband of freshman Rep. Enid Greene (R-UT), was under investigation for bank fraud by the U.S. Attorney's Office for the District of Columbia, the FBI, and a federal grand

jury (hereinafter "the government" or "the government's investigation"). In the midst of the ensuing controversy, Senator Orrin Hatch (R-UT) called Rep. Greene and Joseph P. Waldholtz to his office to try to get to the bottom of the matter. It was apparent to Senator Hatch at that meeting that Rep. Greene was ignorant of Joseph P. Waldholtz's criminal schemes and truly believed that he was innocent of the charges that had been made against him. Senator Hatch, however, found Joseph P. Waldholtz's explanation of the allegations lacking in credibility and told him that he would go to jail if he did not straighten out the situation right away. Letter from Senator Orrin Hatch (R-UT) to Enid Greene (September 25, 1998). (Exhibit D).

On Saturday, November 11, 1995, Joseph P. Waldholtz fled Washington, D.C. to escape the government's investigation. Over the ensuing weekend, Enid Greene discovered evidence among his papers that Joseph P. Waldholtz had falsified records and embezzled a substantial amount of money from both of the Enid committees. On November 14, 1995, Ms. Greene notified the Commission that she had removed Joseph P. Waldholtz as treasurer of these committees and had initiated an audit of both committees' records. She retained forensic accounting specialists with the national accounting firm of Coopers & Lybrand LLP and directed them to reconstruct the campaign records of both committees.

The forensic accountants from Coopers & Lybrand, working with a team of lawyers from Powell, Goldstein, Frazer & Murphy, spent more than six months reconstructing the committees' records, which had been devastated by the criminal actions of Joseph P. Waldholtz. Then, at a

The General Counsel's Brief incorrectly states that the federal criminal investigators began their inquiry into Enid '94 based on questions raised in Utah regarding the amount of money that Enid Greene was reported to have contributed to her campaign. General Counsel's Brief at 3-4. In fact, to our knowledge, the investigation was not broadened to include potential election law violations until Ms. Greene and the Enid committees uncovered evidence that Joseph P. Waldholtz had embezzled a substantial amount of money from both Enid '94 and Enid '96 and brought that evidence to the attention of the FEC and the U.S. Attorney.

cost of well over \$150,000, the Enid committees filed corrected FEC reports for both Enid '94 and Enid '96 covering all of calendar years 1994 and 1995.

Enid Greene personally assumed the position of treasurer of the Enid committees on January 26, 1996. On March 8, 1996, Enid Greene, as treasurer of the Enid committees, filed with the Commission the complaint against Joseph P. Waldholtz that initiated MUR 4322. Along with the complaint, the committees provided extensive and compelling evidence that, during the time he served as treasurer of the Enid committees, Joseph P. Waldholtz committed well in excess of 850 violations of the Federal Election Campaign Act ("FECA") and applicable FEC regulations.

One of the central allegations in the complaint was that, during the time he served as treasurer of Enid '94, Joseph P. Waldholtz, on twenty-eight (28) separate occasions, using funds he had obtained by fraud from Mr. Greene, knowingly and willfully contributed to Enid '94 a total of nine hundred eighty-four thousand dollars (\$984,000) in the name of Enid Greene. Complaint at ¶¶ 4, 26(a), 29, 31, and 32. These contributions by Joseph P. Waldholtz violated FECA's prohibition on making contributions in the name of another (2 U.S.C. § 441f), as well as the prohibition on contributing more than \$1,000 to a single candidate for any one election (2 U.S.C. § 441a(a)(1)(A)) and the prohibition on contributing more than \$25,000 in any one calendar year (2 U.S.C. § 441a(a)(3)).

Enid Greene and the Enid committees provided the U.S. Attorney for the District of Columbia with a copy of the complaint in MUR 4322 on the same day the complaint was filed with the FEC. By that point in time, D. Forrest Greene, Enid Greene and the Enid committees had already been cooperating with an investigation by the U.S. Attorney's Office into the extensive criminal activities of Joseph P. Waldholtz for more than four months. Enid Greene

voluntarily provided the government with reams of documents abandoned by Joseph P. Waldholtz when he fled Washington, D.C. Enid Greene also gave the government free access to the two homes she shared with Joseph P. Waldholtz in Salt Lake City, Utah and Washington. D.C. Within a month of his disappearance, the government, because of the extensive cooperation of Enid Greene, had a substantial amount of evidence to support the allegations that Joseph P. Waldholtz had defrauded both the Wright Patman Congressional Federal Credit Union and First Security Bank of Utah by kiting checks between the two financial institutions. Indictment at 1-7 (Exhibit E); Plea Agreement at 2-3 (Exhibit F).

Moreover, while cooperating with the investigation of the bank fraud allegations. Enid Greene discovered and turned over to the government substantial and compelling evidence that Joseph P. Waldholtz had also committed a truly astounding number of other federal and state crimes over a period of ten (10) years, starting years before he met Ms. Greene. Among other crimes, Joseph P. Waldholtz:

- Defrauded his grandmother, an elderly Alzheimer's patient, out of at least \$400,000;
- Forged and counterfeited Government National Mortgage Association ("Ginnie Mae") securities as part of his scheme to defraud his grandmother out of hundreds of thousands of dollars:
- Committed perjury in a state court proceeding initiated by his own father to recover the funds that Joseph P. Waldholtz had stolen from his grandmother;
- Defrauded his mother out of her entire life savings -- \$96.000 -- by inducing her to cash in her pension, take out a mortgage on the home she owned free and clear, and give the money to him to "invest" for her;
- Misappropriated at least \$100,000 from his employer, Republican National Committeewoman Elsie Hillman, and was fired for using her funds for expensive hotel suites, first-class airline tickets, and lavish meals while travelling to Republican Party events on her behalf and while working as the Executive Director of Pennsylvania for Bush-Quayle '92;

- Caused Mrs. Hillman to violate the Federal Election Campaign Act's prohibition on contributing more than \$25,000 in any one year (2 U.S.C. § 441a(a)(3)) in 1990, 1991, and 1992 by failing to keep track of her political contributions, resulting in Mrs. Hillman having to pay a \$32,000 civil penalty:
- Converted contribution checks made out to the Utah Republican Party to his own use while employed as the Party's Executive Director;
- Committed bank fraud by using falsified tax returns showing more than \$250,000 in annual income from a now-known-to-be non-existent "Waldholtz Family Trust" to obtain a home mortgage from First Security Bank of Utah;
- Committed additional bank fraud violations by kiting checks between accounts Joseph P. Waldholtz maintained with Merrill Lynch, Pittsburgh National Bank, and NationsBank;
- Falsified Ms. Greene's 1994 and 1995 congressional financial disclosure statements:
- Forged Ms. Greene's endorsement on her congressional paychecks on two separate occasions and converted the proceeds to his own use;
- Committed three separate instances of tax fraud involving the tax returns Joseph P. Waldholtz filed for tax years 1992 through 1994; and
- Committed massive (more than 850) violations of the Federal Election Campaign Act and applicable FEC regulations while serving as treasurer of Enid '94 and Enid '96, as alleged in the complaint in MUR 4322.
- Embezzled funds from both Enid '94 and Enid '96.

Plea Agreement at 4-5 (Exhibit F).

Most of this documentary evidence was turned over to the government by the end of 1995. During the six months it took the government to evaluate and corroborate the evidence of Joseph P. Waldholtz's criminal activities provided by Enid Greene, both D. Forrest and Enid Greene continued to cooperate with the government's investigation. By early 1996, however, it was evident that, with so much compelling evidence of Joseph P. Waldholtz's guilt already in hand, the principal focus of the government's investigation had somehow turned to D. Forrest and Enid Greene. In particular, the government seemed intent on trying to prove that both D. Forrest and Enid Greene had conspired with Joseph P. Waldholtz to funnel funds belonging to D.

Forrest Greene into Enid Greene's 1994 congressional election campaign, in violation of section 441f.

There was no truth to this theory, and both D. Forrest and Enid Greene continued to cooperate with the government. Both D. Forrest and Enid Greene submitted voluntarily to numerous interviews with agents of the government. Government agents were given complete and open access to the homes and offices of both D. Forrest and Enid Greene. Both D. Forrest and Enid Greene voluntarily complied with document requests related to Ms. Greene's 1994 congressional campaign, turning over more than 10,000 pages of documents. Enid Greene voluntarily testified before a federal grand jury investigating these transactions on three separate occasions. D. Forrest Greene also voluntarily appeared before the same grand jury.

After nearly five months of exhaustively investigating the financial transactions between D. Forrest Greene, Enid Greene and Joseph P. Waldholtz, the government failed to find any credible evidence that D. Forrest and Enid Greene had conspired with Joseph P. Waldholtz to violate section 441f. On May 2, 1996 -- seven months after Joseph P. Waldholtz fled Washington, D.C. -- the grand jury returned a twenty-seven count indictment against Joseph P. Waldholtz for bank fraud concerning his massive check kiting scheme. Indictment at 1-7 (Exhibit E). The grand jury took no action against either D. Forrest or Enid Greene.

On June 5, 1996, Joseph P. Waldholtz pleaded guilty to a three count information alleging. *inter alia*, that, as treasurer of Enid '94, he had knowingly and willfully filed a report with the FEC in which he falsely and fraudulently certified that Enid Greene had contributed approximately \$1,800,000 of her personal funds to Enid '94 when, in fact, Joseph P. Waldholtz knew that the \$1,800,000 had not come from Ms. Greene's personal funds but, instead, had been taken from funds that Joseph P. Waldholtz had, by various schemes and devices, obtained from

Mr. Greene.³⁷ Information at 1-2 (Exhibit G); Plea Agreement at 3-4 (Exhibit F). Based on a number of false representations made by Joseph P. Waldholtz before and during their marriage. Ms. Greene believed that the funds being contributed to her campaign were legally hers. lawfully contributed to her campaign in accordance with 11 C.F.R. § 110.11.

As part of his plea agreement, Joseph P. Waldholtz agreed to "cooperate" with the U.S. Attorney's investigation of Ms. Greene's 1994 congressional election campaign. This investigation was aimed primarily at discovering whether there was any credible evidence that D. Forrest and/or Enid Greene had conspired with Joseph P. Waldholtz to violate section 441f. Plea Agreement at 7 (Exhibit F). In exchange for this guilty plea and pledge of cooperation, the U.S. Attorney agreed not to prosecute Joseph P. Waldholtz for a myriad of other crimes—including additional charges of bank fraud, tax fraud, forgery, uttering, and numerous violations of the Federal Election Campaign Act he committed while he served as treasurer of Enid '94 and Enid '96. Plea Agreement at 4-6 (Exhibit F).

During the summer of 1996, the U.S. Attorney's Office attempted to corroborate claims by Joseph P. Waldholtz that both D. Forrest and Enid Greene had conspired with him to violate 2 U.S.C. § 441f. Several additional witnesses were called before the grand jury investigating D. Forrest and Enid Greene. On October 31, 1996, however, the U.S. Attorney took the virtually unprecedented step of issuing a press release to announce that he would not pursue criminal charges against either D. Forrest or Enid Greene.

Joseph P. Waldholtz also pleaded guilty to one count of a twenty-seven count indictment for bank fraud (18 U.S.C. § 1344) for carrying out a \$3 million check-kiting scheme using a joint checking account he shared with Ms. Greene at the Wright Patman Congressional Federal Credit Union. Indictment at 1-8 (Exhibit E); Plea Agreement at 1-3 (Exhibit F). Joseph P. Waldholtz also pleaded guilty to the remaining count in the information - willfully aiding in the filing of a false tax return (26 U.S.C. § 7206(2)) for knowingly providing Ms. Greene with false information regarding the value of stock he had supposedly given to her, knowing that she would incorporate that false information on her 1993 tax return. Information at 3 (Exhibit G): Plea Agreement at 4 (Exhibit F).

On November 7, 1996, Joseph P. Waldholtz was sentenced to 37 months in federal prison for one count of bank fraud (18 U.S.C. § 1344), one count of making a false statement to the Commission (18 U.S.C. § 1001), one count of making a false report to the Commission (2 U.S.C. §§ 437g(d) and 441a) and one count of willfully assisting in the filing of a false tax return (26 U.S.C. § 7206(2)). In the three-month period between his guilty plea and his sentencing, Joseph P. Waldholtz:

- Admitted to the FBI agent supervising his release that he had been using heroin on a daily basis for several weeks;
- Stole his dentist father's prescription pad and forged his father's name to a prescription for Vicodin (a narcotic painkiller):
- Stole his parents' checkbook, forged his father's signature on a check for \$415 made payable to himself and cashed it;
- Wrote seven bad checks totaling \$24,600 to his parents;
- Obtained a credit card from a friend and made \$550 in unauthorized charges on it;

- Stole another credit card from the same friend and made approximately \$193 in purchases with it;
- Obtained a credit card issued to his father and, without his father's authorization or consent, made \$1,446 in purchases; and
- Wrote a bad check for approximately \$615 to an optometrist.

Not surprisingly, in its sentencing memorandum, the U.S. Attorney's Office called Joseph P. Waldholtz, "a con artist whose continued pattern of fraud and deceit has assumed pathological dimensions." Government's Memorandum In Aid Of Sentencing at 16 (Exhibit H). U.S. District Court Judge Norma Holloway Johnson not only agreed, but sentenced Joseph P. Waldholtz to three additional months in federal prison over and above the sentence sought by the government. Sentencing Memorandum at 3 (Exhibit I)

B. Procedural History of FEC Investigation.

On June 17, 1997 -- more than six months after D. Forrest and Enid Greene were exonerated and Joseph P. Waldholtz was convicted -- the Commission found reason to believe, based on the very same information that led to Joseph P. Waldholtz's conviction, that (1) D. Forrest Greene violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) and 2 U.S.C. § 441f by, respectively, making contributions in excess of the \$1,000 limit per election, by making contributions in excess of the overall annual \$25,000 limit, and by making contributions in the name of another; (2) Enid Greene violated 2 U.S.C. § 441f by knowingly permitting her name to be used to effect these contributions; and (3) the Enid committees and Enid Greene, as treasurer, should be held responsible for various violations of FECA and applicable FEC regulations that were committed by Joseph P. Waldholtz during the time he served as treasurer of the Enid committees.

D. Forrest Greene, Enid Greene and the Enid committees filed a joint response to the Commission's reason to believe determination on July 28, 1997. The joint response was accompanied by five volumes of exhibits documenting Joseph P. Waldholtz's sole personal and individual responsibility for the violations alleged against D. Forrest Greene. Enid Greene, and the Enid committees. On July 28, 1997, D. Forrest and Enid Greene also filed a preliminary response to the subpoenas accompanying the Commission's reason to believe determination. On August 7, 1997, counsel for D. Forrest and Enid Greene supplemented the response to the Commission's subpoenas by providing the General Counsel with a transcript of Enid Greene's December 5, 1995 press conference. A videotape of the press conference was provided to the General Counsel on August 28, 1997. On September 17, 1997, D. Forrest and Enid Greene filed yet another supplemental response to the Commission's subpoenas in anticipation of the depositions of D. Forrest and Enid Greene.

The General Counsel deposed D. Forrest Greene on September 25, 1997. He testified truthfully and accurately, to the best of his ability.

Enid Greene was deposed the next day. She, too, testified truthfully and accurately, but her deposition was significantly more contentious. The General Counsel did not appear to have read the joint response and accompanying exhibits filed by D. Forrest and Enid Greene and the Enid committees. Enid Greene Dep. at 224. Moreover, the General Counsel tried to prevent Enid Greene from testifying about the most important exhibits supporting the joint response. Enid Greene Dep. at 209-210, 212-15, 218-19. The General Counsel even went so far as to

attempt to prevent counsel for Enid Greene from eliciting relevant testimony from her about these documents when the General Counsel failed to do so. Enid Greene Dep. at 220-229. Enid Greene did, however, testify eventually as to these crucial documents. Enid Greene Dep. at 229-32.

Less than a week after the depositions of D. Forrest and Enid Greene, the existence of the Commission's investigation was leaked to the press in violation of 2 U.S.C. § 437g(a)(12)(A). On October 1, 1997, The Salt Lake Tribune published an article entitled, FEC Starts Greene Probe, in which three former employees of Enid '94 – David Harmer, KayLin Loveland, and Peter Valcarce – confirmed that they had been interviewed by representatives of the Office of General Counsel within the past two months. (Exhibit J). The former campaign workers characterized the interviews as "wide-ranging" and gave the reporter the impression that "the FEC investigation is a new one and not limited to the allegations and issues raised in Greene's complaint [against Joseph P. Waldholtz]." All three former campaign workers cited FECA's confidentiality provisions in declining to discuss specific issues raised in their interviews. The fact that they nevertheless then confirmed that they had been interviewed by the Office of General Counsel and felt free to characterize the interviews as "wide-ranging" indicated that the witnesses had not been adequately advised as to their duties under FECA by the Office of General Counsel.

Counsel for D. Forrest and Enid Greene brought these apparent violations of 2 U.S.C. § 437g(a)(12)(A) to the attention of the General Counsel, but were told that it was highly unlikely that the Commission would exercise its discretionary enforcement authority to initiate an investigation of the Commission's own personnel. On October 8, 1997, Enid Greene received a letter from the Utah State Bar announcing that, as a direct result of The Salt Lake Tribune article,

the Office of Attorney Discipline had opened a file on Enid Greene and would consider taking action against her depending upon the outcome of the Commission's investigation. (Exhibit K).

Despite these egregious violations of 2 U.S.C. § 437g(a)(12)(A), both D. Forrest and Enid Greene continued to cooperate with the General Counsel's investigation. On December 1, 1997, counsel for D. Forrest and Enid Greene provided the General Counsel with a copy of the contract between Enid '94 and the FEC accounting firm of Huckaby & Associates. On December 17, 1997, counsel for D. Forrest and Enid Greene responded to yet another request for documents from the General Counsel and turned over D. Forrest Greene's personal calendar for 1995 and copies of all of the password-protected documents retrieved from Joseph P. Waldholtz's laptop computer.

During the first two weeks of June, 1998, Joseph P. Waldholtz gave prison interviews to a number of members of the national media. In these interviews, Joseph P. Waldholtz repeatedly indicated that neither D. Forrest nor Enid Greene was a knowing participant in his plan to circumvent FECA's regulatory scheme. Counsel for D. Forrest and Enid Greene provided the General Counsel with copies of the resulting articles on June 18, 1998.

On July 20. 1998 -- approximately one month later -- the General Counsel recommended that the Commission find probable cause to believe that D. Forrest Greene violated 2 U.S.C. §§ 441f. 441a(a)(1)(A) and 441a(a)(3).

II. SCIENTER ELEMENT OF SECTION 4411 VIOLATION.

Based, apparently, on nothing more than the depositions of D. Forrest and Enid Greene, the General Counsel has recommended that the Commission find probable cause to believe that D. Forrest Greene violated the prohibition on making contributions in the name of another (2 U.S.C. § 441f), and that, because of the amount of money involved in these alleged

contributions, Mr. Greene also violated the prohibition on making contributions in excess of \$1.000 per election (2 U.S.C. § 441a(a)(1)(A)) and the prohibition on making more than \$25.000 in contributions in any one calendar year (2 U.S.C. § 441a(a)(3)). General Counsel's Brief at 22-24. There is no basis in law or fact to support this probable cause recommendation.

It is difficult to discern from the General Counsel's inartfully drafted brief how D. Forrest Greene could have violated section 441f given the General Counsel's concession that "D. Forrest Greene did not make contributions directly to Enid Greene's campaign." General Counsel's Brief at 22. The General Counsel's lack of precision is perhaps understandable given that he is attempting to apply section 441f to a set of facts that was never envisioned by Congress or the Commission. The Commission's regulations implementing section 441f assume that only two parties will be involved in the course of conduct that constitutes a violation of section 441f.

The Commission's regulations set out two examples of contributions in the name of another. First, a violation of section 441f occurs when an individual gives money, all or part of which was provided to the contributor by another person, without disclosing the source of the money to the recipient committee at the time the contribution is made. 11 C.F.R. § 110.4(b)(2)(i). The only person in these matters who violated section 441f in this manner is Joseph P. Waldholtz, who took money that he obtained by fraud from D. Forrest Greene, converted it to his own use, and then contributed it to Enid '94 without disclosing that he, Joseph P. Waldholtz, was the true contributor.

Second, the Commission's regulations also indicate that section 441f may be violated by making a contribution and attributing as the source of the money another person when in fact the contributor is the source. 11 C.F.R. § 110.4(b)(2)(ii). Here again, however, the only person who violated section 441f in this manner is Joseph P. Waldholtz, who contributed money he had

obtained by fraud from D. Forrest Greene and attributed it to another person. Enid Greene. The Commission's regulations thus do not contemplate the facts in this case, where the true contributor obtained funds from one individual, D. Forrest Greene, and then contributed them to the campaign in the name of a third individual, Enid Greene.

The Commission's regulations interpreting 2 U.S.C. § 441f state that the prohibition on making contributions in the name of another can be violated in one of four different ways: (1) Making a contribution in the name of another; (2) Knowingly permitting your name to be used to effect such a contribution; (3) Knowingly helping or assisting any person in making a contribution in the name of another; or (4) Knowingly accepting a contribution made by one person in the name of another. 11 C.F.R. § 110.4(b)(1)(i)-(iv).

The General Counsel has conceded, as he must, that D. Forrest Greene never made a contribution directly to Enid '94 in the name of Enid Greene. 11 C.F.R. § 110.4(b)(1)(i); General Counsel's Brief at 22. Instead, D. Forrest Greene has acknowledged that between January 21, 1994 and October 12, 1995, he made a series of twenty-four transfers of funds to Joseph P. Waldholtz totalling nearly \$4 million. Joseph P. Waldholtz then, without D. Forrest Greene's knowledge or consent, in a series of eighty separate transactions, transferred approximately \$1,800,000 to Enid '94. It was Joseph P. Waldholtz, not D. Forrest Greene, who then reported to the Commission that Enid Greene contributed a total of \$984,000 to Enid '94 in twenty-eight separate transactions.

Nor has the General Counsel alleged that D. Forrest Greene permitted his name to be used to effect a contribution in the name of another (11 C.F.R. § 110.4(b)(1)(ii)) or accepted a contribution made by one person in the name of another (11 C.F.R. § 110.4(b)(1)(iv)). Thus, the only way Mr. Greene could have possibly violated section 441f is if he *knowingly* assisted

Joseph P. Waldholtz in making contributions to Enid '94 in the name of Enid Greene. 11 C.F.R. § 110.4(b)(1)(iii).

The parameters of the scienter requirement codified at 11 C.F.R. § 110.4(b)(1)(iii) were established by the only known court decision to interpret the term "knowingly" in a section 441f case. In FEC v. Rodriguez. No. 86-687 Civ-T-10(B) (M.D. Fla. May 5, 1987)(unpublished order), the U.S. District Court for the Middle District of Florida denied the Commission's motion for summary judgment on the issue of whether the respondent had knowingly accepted a contribution made by one person in the name of another in violation of section 441f. The respondent, Cesar Rodriguez, had acted as a messenger for the true contributor, who reimbursed others for making contributions in their own name to campaign committees specified by the true contributor. "Rodriguez obtained some of the checks made payable to the order of the campaign committees, and subsequently delivered some of the reimbursement checks from [the true contributor] to the [straw] contributors." Slip op. at 2. The Court found that Rodriguez's actions did not amount to knowing acceptance within the meaning of section 441.

As far as we have been able to determine, no court has ever interpreted the scienter requirement of section 441f as allowing the imposition of civil penalties on the basis that the Commission had shown that the respondent had knowledge of the operative facts that make up a section 441f violation. Indeed, the reported cases that address any of FECA's scienter requirements are few in number. It appears to be well established that when the Commission seeks to impose civil penalties on a respondent under the "knowing and willful" standard of 2 U.S.C § 437g, it must demonstrate that the respondent acted with "knowing, conscious, and deliberate flaunting of the Act." National Right to Work Committee, Inc. v. FEC, 716 F.2d 1401, 1403 (D.C. Cir. 1981); AFL-CIO v. FEC, 628 F.2d 97, 101 (D.C. Cir.), cert. denied, 449 U.S. 982 (1980). The few cases interpreting the lesser "knowing" standard of section 441a, which Mr. Greene is not alleged to have violated, are split. Two federal district courts have interpreted the "knowing" standard in 2 U.S.C. § 441a as allowing imposition of civil liability where the Commission had demonstrated that the respondent had knowledge of the facts rendering its conduct unlawful. FEC v. Dramesi for Congress Committee, 640 F. Supp. 985, 987 (D.N.J. 1986); FEC v. California Medical Ass'n, 502 F. Supp. 196, 203-04 (N.D. Cal. 1980). The U.S. District Court for the District of Columbia, however, has the opposite view that the "knowing" standard of section 441a requires the Commission to demonstrate that the respondent was aware of the illegal nature of his contributions. In re Federal Election Campaign Act Litigation, 474 F. Supp. 1044, 1047 n.3 (D.D.C. 1979)

In so ruling, the Court distinguished <u>United States v. Chestnut</u>, 533 F.2d 40 (2nd Cir. 1975) on the basis that, unlike Rodriguez, the true contributor in <u>Chestnut</u> was a "knowing participant in [a] scheme" to circumvent the prohibition on corporate contributions to candidates for federal office. Slip op. at 3. Accordingly, in order to satisfy the scienter requirement of section 441f, the Commission must demonstrate that a respondent is a knowing participant in a plan to circumvent FECA's regulatory scheme, i.e., that the respondent knew the law and intentionally sought to violate it.⁶

The Commission adopted the Rodriguez's interpretation of the scienter requirement of section 441f when it codified this decision in its regulations interpreting section 441f. On August 17, 1989, the Commission issued a final rule adding a new paragraph (b)(1)(iii) to 11 C.F.R. § 110.4. Section 110.4(b)(1)(iii) specifically prohibits any person from knowingly helping or assisting any person in making a contribution in the name of another. In its Explanation and Justification for this new rule, the Commission said it applied only "to those who initiate or instigate or have some significant participation in a plan or scheme to make a

Section 441f is a criminal statute, which is subject to both civil enforcement by the Commission and criminal prosecution by the Department of Justice. Section 101(f)(1) of the Federal Election Campaign Act Amendments of 1974 added a new section 614 to the U.S. Criminal Code, Section 614 made it a crime for anyone to make a contribution in the name of another. Violations of section 614 were originally punishable by a criminal fine of up to \$25,000 or imprisonment for up to one year. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101(f)(1), 88 Stat. 1263, 1268 (1974)(codified at 18 U.S.C. § 614). See also S. Conf. Rep. No. 1237, 93rd Cong., 2nd Sess. 60, reprinted in 1974 U.S. Code Cong. & Admin. News 5618, 5629. Section 112(2) of the Federal Election Campaign Act Amendments of 1976 added a new section 325 to the Federal Election Campaign Act that incorporated the provisions of 18 U.S.C. § 614 into 2 U.S.C § 441f and made violations of section 411f subject to both criminal and civil penalties. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475, 494 (1976)(codified at 2 U.S.C.§ 441f). See also H.R. Conf. Rep. No. 1057, 94th Cong., 2nd Sess. 67, reprinted in 1976 1974 U.S. Code Cong. & Admin. News 946, 982. Nothing in the legislative history of section 325 indicates that Congress sought to change the scienter requirement of section 614 when the provision was moved from the U.S. Criminal Code to FECA and made punishable by both criminal and civil penalties, When the Commission seeks to impose civil penalties for violations of those provisions of FECA that are subject to both civil and criminal enforcement, the Commission must meet the higher criminal standard and show that the respondent knew the law and intentionally violated it. K. Gross and K. Hong, Defending Prosecutions Under FECA: Drawing the Criminal/Civil Line in White Collar Crime 1998 D-7 to D-8 (ABA-CLE 1998).

contribution in the name of another" and that this new language would not reach an individual who acts "without any knowledge of the scheme" 54 Fed. Reg. 34.098 at 34.105. col. 1 (Aug. 17, 1989), as amended by 55 Fed. Reg. 2.281, col. 2 (Jan. 23, 1990). Thus, the Commission has ratified the Rodriguez decision that a person can only knowingly violate section 441f if he or she is aware that they are participating in a plan to circumvent FECA's regulatory scheme. Moreover, pursuant to 2 U.S.C. § 438(d), this regulation was submitted to Congress for review. Neither the Senate nor the House of Representatives disapproved the regulation. The courts have long held that Congress' failure to disapprove a proposed FEC regulation is an indication that Congress did not look unfavorably on the Commission's construction of FECA. FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 34 (1981).

Accordingly, in order to support his probable cause recommendation, the General Counsel must demonstrate that it is more probable than not that D. Forrest Greene knew both that (1) funds he provided to Joseph P. Waldholtz were subsequently contributed to Enid '94 in the name of Enid Greene, and (2) he was participating in a deliberate plan to evade FECA's regulatory scheme. Any fair evaluation of all the evidence that has been adduced in these matters will conclude the General Counsel has failed to meet this burden, because such evidence does not exist.

III. D. FORREST GREENE DID NOT KNOWINGLY VIOLATE SECTION 441f.

A. D. Forrest Greene Was Not Aware that Funds He Provided to Joseph P. Waldholtz Were Used by Joseph P. Waldholtz to Make Contributions to Enid '94 in the Name of Enid Greene.

1. Personal Loans.

Between January 21, 1994 and August 8, 1994, Mr. Greene loaned Joseph P. Waldholtz a total of \$598,000 in nine separate transactions. As Mr. Greene testified during his deposition -- and has already been determined by a Utah state court and admitted by Joseph P. Waldholtz -- these loans were made based solely on a series of misrepresentations by his former son-in-law about the alleged dire financial condition of his mother and the consequent financial difficulties she had created for Joseph P. Waldholtz through a variety of transactions. D. Forrest Greene Dep. at 133-34, 152, 196. Joseph P. Waldholtz normally made these requests in person, when both he and Mr. Greene were in Salt Lake City, or by telephone, from either Washington, D.C. or Salt Lake City, to Mr. Greene in San Francisco. D. Forrest Greene Dep. at 133-34, 166.

An extensive search by counsel of Mr. Greene's home in Salt Lake City failed to uncover any written requests by Joseph P. Waldholtz for money. After Joseph P. Waldholtz fled Washington, D.C. on November 11, 1995, however, Enid Greene discovered among the belongings he left behind a computer diskette. Further investigation revealed that the diskette contained a number of password-protected documents that Joseph P. Waldholtz had created on his personal computer. One of those documents is a letter that was created on April 28, 1994 that

We do not mean to imply by focusing on the first eight months of 1994 that all of the personal loans Mr. Greene made to Joseph P. Waldholtz occurred during this period. Indeed, Joseph P. Waldholtz continued to approach Mr. Greene for personal loans throughout 1994 and well into 1995. Moreover, the transfers Mr. Greene made to Joseph P. Waldholtz in the fall of 1994 often contained both loan proceeds and payments as part of the so-called Asset Swap, making it impossible to tell precisely where one scheme ended and the next one began.

In 1995, before Joseph P. Waldholtz's abrupt disappearance from Washington, Mr. Greene retired and closed his office in San Francisco, discarding a large number of documents.

Joseph P. Waldholtz apparently intended to send to Mr. Greene. Protected from prying eyes by the password "HELP," the letter, which is addressed to Mr. Greene at his business address in San Francisco, reads, in part:

Dear Mr. Greene:

Please excuse this typed note, but I fear if I hand wrote it. it would be illegible! I wanted to give you an update on what is going on with the financial matters we have been dealing with. I have not discussed all of this with Enid because I don't want to upset her anymore than she has to be.

* * * * * *

There are several large problems that I have been dealing with. Things with my mother have not been well at all. She has ransacked other accounts that I didn't know she had access to. She has put me in a very precarious financial situation again. While you have heard it before, I have taken the necessary steps to remove myself from this situation. We are going to get a guardian and I will be relieved of my day to day responsibility.

She has overdrawn two accounts in Pittsburgh that I transfer money through. The total is \$114,000. What an incredible sum. The problem is this - it involves Utah Banks now because that is where we transfer money to. While they have tried to be understanding, we are out of time. In fact, because of the American Express fiasco, I think they are very nervous and would consider legal action if I can't resolve this.

* * * * * *

I have tried to get a loan, but it cannot be done in time. I don't feel that I can ask you to help again, but I really don't know where else to turn. I have never been at a lower point in my life.

* * * * * *

If you are wondering why I can't access the money that was to be returned to you, it is because she [Waldholtz's mother] accessed it and spent it on jewelry and the house. The items cannot be returned, and even if they could, their value is much less than [what] she spent on them. She was really taken advantage of. But that's another matter.

* * * * * * *

Mr. Greene, I am so afraid of scandal, I am just a wreck. I think we need to keep this between us. I cannot cause more pain for Enid or Mrs. Greene. She has been so kind to us; our relationship is really such a positive force in my life.

No matter what your decision, please know how much I appreciate your advice, your concern, and your love.

Letter from Joseph P. Waldholtz to D. Forrest Greene (April 28, 1994)(Exhibit L).

On April 29, 1994, Mr. Greene loaned Joseph P. Waldholtz \$56,000. General Counsel's Brief at 8. The April 28, 1994 Waldholtz letter supports strongly the testimony of both D. Forrest and Enid Greene. Neither D. Forrest nor Enid Greene was aware that Joseph P. Waldholtz was transferring money that had been loaned to him by Mr. Greene into Enid '94. Moreover, Joseph P. Waldholtz's letter demonstrates that Joseph P. Waldholtz tried deliberately to hide from Enid Greene the vast extent of his borrowing from Mr. Greene. Enid Greene Dep. at page 148.

2. Asset Swap.

As noted above, between August 25, 1994 and November 14, 1994, D. Forrest Greene transferred to accounts controlled by Joseph P. Waldholtz a total of \$2,211,000. General Counsel's Brief at 8. During this same time period, Joseph P. Waldholtz made seventeen contributions totaling \$937,500 to Enid '94, which he reported to the FEC as contributions from Enid Greene. This money was provided by D. Forrest Greene to Joseph P. Waldholtz in the belief that, in exchange, Mr. Greene had been assigned the right to receive the proceeds from the sale of commercial real estate in Pennsylvania that was jointly owned by Joseph P. Waldholtz and Enid Greene.

Enid Greene went to great lengths to explain this transaction -- which, we now know, involved real estate that did not actually exist - to the General Counsel during her deposition. Enid Greene Dep. at pages 188-198, 206-214, 224-232. The General Counsel's probable cause

recommendation is based on what only can be described as a deliberate misinterpretation of this testimony. Despite her testimony that she repeatedly asked Joseph P. Waldholtz to provide documentation of the Asset Swap to her father (Enid Greene Dep. at pages 195, 207-209, 211-212, 236-237), and evidence that, in response to her requests, Joseph P. Waldholtz fabricated false documentation, the General Counsel's probable cause recommendation is based, in large part, on the premise that D. Forrest Greene never actually *received* the fabricated documentation of the Asset Swap. General Counsel's Brief at 16, 21.

Despite the best efforts of the General Counsel, however, the record in these matters shows that D. Forrest Greene did not blindly give away \$2,200,000. Instead, he was duped into providing these funds by Joseph P. Waldholtz, who concocted an elaborate ruse, using falsified documents, to convince Mr. Greene that he had indeed been assigned the right to the proceeds from the sale of the Pennsylvania property.

The so-called Asset Swap appears to have occurred during the last two weeks of August, 1994. As Enid Greene testified during her deposition, late in the summer of 1994, Joseph P. Waldholtz approached her and told her that the so-called Waldholtz Family Trust had been frozen as a result of litigation initiated by other Waldholtz relatives over the management of the trust. The freeze applied to the so-called "TWC Ready Assets" mutual fund account within the so-called Waldholtz Family Trust that Joseph P. Waldholtz had supposedly established for Enid Greene at the time of their August 8, 1993 wedding. Enid Greene believed that it was this mutual fund that was the source of all the contributions to Enid '94 that had been made in her name up to this point in the campaign.

Having manufactured a campaign funding crisis, Joseph P. Waldholtz then suggested that Enid Greene approach her father, D. Forrest Greene, for a campaign loan. Enid Greene rejected

that suggestion out of hand, telling Waldholtz that under federal election law her father could not simply lend money to the campaign; he would have to receive some sort of asset in exchange. Joseph P. Waldholtz immediately "remembered" that he had inherited a piece of commercial real estate from a relative of his grandmother's. He told Enid Greene that the real estate was in probate, but that the property was worth \$2.2 million and that he had already found a ready buyer for the property at that price. Moreover, Joseph P. Waldholtz told her that, since Pennsylvania was a community property state and the property had been inherited by him during their marriage, Enid Greene was a joint owner of the property and could contribute up to half of the value of the property -- \$1.1 million -- to her campaign.

Enid Greene suggested that an assignment of the proceeds from the sale of the real estate might be a permissible way of transferring to her father an asset in exchange for cash. She directed Joseph P. Waldholtz to check into the legality of the transaction with both the lawyers for the so-called Waldholtz Family Trust and Enid '94's FEC accountants, Huckaby & Associates. Not surprisingly, Joseph P. Waldholtz returned several days later and reported that he had checked with the "trustees" of the so-called Waldholtz Family Trust and the accountants and they both had told him that the transaction was completely legal.

In fact, what Joseph P. Waldholtz actually did was to begin preparing an elaborate ruse. Shortly after his conversation with Enid Greene, Joseph P. Waldholtz apparently sat down at his computer and drafted a letter to D. Forrest Greene. In the letter, protected from disclosure by the password

Joseph P. Waldholtz claimed that his mother had run up \$200,000 in overdrafts on accounts she shared with him and pleaded for \$55,000 in cash to cover immediate expenses. Joseph P. Waldholtz promised to repay all of the outstanding loans by selling \$2 million in real estate that he claimed to own in Pennsylvania:

Dear Mr. And Mrs. Greene:

I have spent the past four hours on the phone with Pittsburgh, the attorneys. First Security, and other investigators. I made Enid a promise that I would never 'give up' or say that I should leave her for her own good. That was my anniversary present to her. Yet, once again, because of my failure as a husband, son, son-in-law, and I guess even a person, we are in a horrible position.

The money was transferred to us and ready for wire. Do you remember two weeks ago when First Security had to take money out of my account because I deposited a check of my mother's and she signed a statement that she never received it? (Which was not true: I wired her \$500 per week out of that check – so she didn't spend it all at once!) Well, it appears that all of the checks that I have deposited she has done this with. We re-invested 4 large CDS for her through this account, and in banks back in Pittsburgh. Part of the money was used to pay her incredible overdrafts, part for her to live on, and part was stolen.

The worst part is that we are in a minus position again because of my family.

* * * * * * * *

I will return to Pittsburgh during the Labor Day weekend and sell two million dollars of real estate to cover this. I dealt with that this morning. There is a buyer; I have no choice.

Every penny you loaned us will be repaid at market rates -- just like we were borrowing from a bank. It is my obligation to you.

The problem is this: We can't wire you money today, and we are in a desperate situation because of the reversals. The total is staggering, over \$200,000.00. I really am at a loss here; I will not upset Enid any more. I have failed her as a husband. My mother is ruining her campaign's chances.

* * * * * *

Again, I will close on the real estate when I go back to Pittsburgh. We will have the money that we recover from the fraud (around \$935,000), plus the two million dollars in cash from selling property.

I want that much cash because I cannot go through this anymore! I cannot put Enid or you through it.

I know Mr. Greene has a flight up here later today, and I have again caused a problem. I have outlined how I plan to repay this. The immediate problem is a great one. You will never know how sorry I am.

Letter from Joseph P. Waldholtz to D. Forrest Greene (August 24, 1994)(Exhibit M).

Apparently, Joseph P. Waldholtz never actually sent this letter. As was the case with the other password-protected letter to D. Forrest Greene that was recovered from Joseph P. Waldholtz's laptop computer, D. Forrest Greene has no recollection of receiving this letter and no copies were found during a search of Mr. Greene's home. Moreover, as the letter notes. Mr. Greene was scheduled to be in Salt Lake City later that same day. It appears that Joseph P. Waldholtz approached D. Forrest Greene on August 24, 1998 when he arrived in Salt Lake City and asked him for \$55,000 as the first installment of the Asset Swap. Enid Greene Dep. at 189-98. On August 25, 1994, Joseph P. Waldholtz deposited a \$55,000 personal check from D. Forrest Greene into his personal checking account. General Counsel's Brief at 8.

As noted above, Enid Greene repeatedly asked Joseph P. Waldholtz to provide documentation of the Asset Swap to her father. Enid Greene Dep. at pages 195, 207-209, 211-212, 236-237. In response to her persistent requests, Joseph P. Waldholtz approached the campaign's newly hired press secretary, Michael Levy, in late September, 1994. Joseph P. Waldholtz knew that Mr. Levy had completed two years of law school and had worked as a law clerk for a Washington, D.C. law firm. Joseph P. Waldholtz told Mr. Levy that since he was "a lawyer," Waldholtz wanted his advice on how to assign the proceeds of the sale of real estate to a third party. Joseph P. Waldholtz indicated to Mr. Levy that he owned a piece of real estate in

Incredibly, Joseph P. Waldholtz's plea for cash included a request that Mr. Greene wire \$30,000 directly to a campaign vendor, Wilson Communications. Needless to say, Mr. Greene never transferred any money to any of the Enid '94 campaign vendors, including Wilson Communications. While the letter does not provide any information about D. Forrest Greene's state of mind at the time of the Asset Swap, it certainly demonstrates the extraordinary efforts Joseph P. Waldholtz made to deceive and defraud his father-in-law out of hundreds of thousands of dollars that Joseph P. Waldholtz then knowingly, willfully and illegally funneled into the Enid '94 campaign.

Pennsylvania that he wanted to sell, but that his lawyers did not understand how Waldholtz wanted to structure the transaction. Affidavit of Michael Levy at ¶¶ 2-6 (Exhibit N).

Mr. Levy volunteered to contact an associate at his former law firm who he knew was familiar with real estate law. Mr. Levy called this associate immediately after his conversation with Joseph P. Waldholtz and left a message on the associate's voicemail describing Joseph P. Waldholtz's request and asking for some sample documents that he could use as a model. Affidavit of Michael Levy at ¶ 7-8 (Exhibit N). When Mr. Levy did not receive a return call from the associate, he called a partner at the same law firm and described Joseph P. Waldholtz's request, indicating that Waldholtz needed a "boilerplate" document for the assignment of proceeds from the sale of real estate. Affidavit of Michael Levy at ¶ 9-10 (Exhibit N).

Shortly thereafter, Mr. Levy initiated a conference call between the partner and Joseph P. Waldholtz so that Waldholtz could explain to the lawyer exactly what type of document he needed. On September 23, 1994, the partner faxed to Mr. Levy a one-page assignment of proceeds form. Mr. Levy took the fax to Joseph P. Waldholtz as soon as he received it. Affidavit of Michael Levy at ¶¶ 11-13 (Exhibit N). See also Fax from Emanual Faust to Mike Levy (9/23/94)(Exhibit O).

On September 29, 1994, Mr. Levy was faxed another model assignment of proceeds document by the associate he had originally contacted. Mr. Levy delivered this second fax to Joseph P. Waldholtz the same day he received it. Affidavit of Michael Levy at ¶¶ 14-15 (Exhibit N). See also Fax from Jim Kelly to Michael Levy (9/29/94)(Exhibit P).

At approximately the same time that Joseph P. Waldholtz was talking to Mr. Levy about his need for a model assignment of proceeds form, he was also at work again on his personal computer, generating a memorandum from the so-called Waldholtz Family Trust to Mr. Greene.

This memorandum was saved as a password-protected document on the same computer diskette that Waldholtz had used to create the April 28th and August 24th letters to Mr. Greene discussed previously. Created on January 1, 1994 (no doubt as part of Joseph P. Waldholtz's earlier scheme to obtain fraudulent personal loans from Mr. Greene), the memorandum was revised on September 21, 1994 to read, in its entirety, as follows:

Mr. Greene, we apologize for the delay in sending the materials to you. Joe and Enid asked that we send you the assignment of the real estate and the letter from the U.S. Attorney. We apologize for the delay and the confusion.

If we can be of further assistance, please give us a call.

Thank you.

Memorandum from "The Waldholtz Family Trust" to Mr. D.F. Greene c/o East-West Co. (Exhibit Q).

The three-letter password that Joseph P. Waldholtz chose to protect this bogus "Waldholtz Family Trust" memorandum sums up his entire course of dealing with Mr. Greene: "LIE."

The unrefuted documentary evidence demonstrates that Joseph P. Waldholtz went to extraordinary lengths to deceive both D. Forrest and Enid Greene into believing that the Asset Swap was a lawful transaction. More importantly, these documents demonstrate that D. Forrest Greene was not a knowing participant in Joseph P. Waldholtz's scheme to circumvent FECA. Accordingly, a fair evaluation of all the evidence adduced in these matters can come to no other conclusion than that there is no probable cause to believe that D. Forrest Greene violated section 441f.

3. Utah Fraud Suit.

Long before the Commission decided that there was reason to believe that D. Forrest Greene had conspired with Joseph P. Waldholtz to violate section 441f, Joseph P. Waldholtz had

already conceded to a state court in Utah that he had defrauded Mr. Greene out of nearly \$4 million -- including the funds that Joseph P. Waldholtz then contributed to Enid '94 in the name of Enid Greene.

On May 1, 1996, Mr. Greene brought a civil fraud suit against Joseph P. Waldholtz in a Utah state court in an attempt to recover some of the nearly \$4 million dollars that Mr. Greene had provided to Joseph P. Waldholtz between January 21, 1994 and his abrupt departure from Washington, D.C. on November 11, 1995.

In his complaint, Mr. Greene cited many of the misrepresentations that Joseph P. Waldholtz made to induce Mr. Greene to provide him with funds. These allegations mirror Mr. Greene's deposition testimony. In his complaint, Mr. Greene alleged that during the period between January 1994 and October 1995, Joseph P. Waldholtz repeatedly approached Mr. Greene with requests for money. These requests were made either in person in Salt Lake City or by telephone from Joseph P. Waldholtz in Washington, D.C. and/or Salt Lake City to Mr. Greene in San Francisco. Complaint at ¶ 8 (Exhibit R).

Despite the fact that he had long claimed to be a beneficiary of a so-called Waldholtz Family Trust worth approximately \$325 million, which supposedly provided him with a substantial monthly income, Joseph P. Waldholtz gave several different excuses for needing money from Mr. Greene. Id. at ¶ 7. In January and February 1994, Joseph P. Waldholtz claimed that his biological mother, Barbara Waldholtz, had been the victim of a telemarketing scheme and had overdrawn several joint checking and other accounts she shared with Joseph P. Waldholtz. Joseph P. Waldholtz claimed that he could not use trust funds to pay the obligations incurred by his mother because she was divorced from Waldholtz's father and was therefore barred from receiving any money from the so-called Waldholtz Family Trust. Id. at ¶ 7(d).

Joseph P. Waldholtz later claimed that his mother had been tricked by a con man and, because of the restrictions on the so-called Waldholtz Family Trust, trust funds could not be used to assist her in clearing up substantial overdrafts on accounts she either shared with Joseph P. Waldholtz or had allegedly accessed without his knowledge or consent. Joseph P. Waldholtz claimed he would repay Mr. Greene from personal funds that would soon be available. Id. at ¶ 7(e).

Based on these and numerous other misrepresentations, lies and false statements. Mr. Greene was induced to transfer a total of \$3,987,426 from his personal accounts designated by Joseph P. Waldholtz. Id. at ¶ 5.

Joseph P. Waldholtz filed an answer with the Court on June 6, 1996. In his answer, Joseph P. Waldholtz did not deny that he had defrauded Mr. Greene out of nearly \$4 million. Instead, he invoked his rights under the Fifth Amendment and refused to answer the fraud allegations in the complaint on the basis that any statement made by him would tend to incriminate him. Answer at ¶¶ 5-10 (Exhibit S).

Of course, the prevailing rule has long been that a court may draw an adverse inference of liability when a party invokes the Fifth Amendment in a civil proceeding. <u>Baxter v. Palmigiano</u>, 425 U.S. 308, 318 (1976); <u>Mid-America's Process Service v. Ellison</u>, 767 F.2d 684, 686 (10th Cir. 1985); <u>Hughes Tool Co. v. Meier</u>, 489 F.Supp. 354, 374 (D. Utah 1977). Mr. Greene made just this argument in moving for summary judgment. Memorandum in Support of Motion for Summary Judgment at 4-6 (Exhibit T). The Court agreed that, by invoking his rights under the Fifth Amendment, Joseph P. Waldholtz had conceded the facts alleged in Mr. Greene's complaint and granted Mr. Greene's Motion for Summary Judgment on July 25, 1996. Order Granting Summary Judgment at 1 (Exhibit U).

Incredibly, the General Counsel showed no deference whatsoever to this prior court ruling that strikes at the heart of the General Counsel's argument that D. Forrest Greene was a knowing participant in Joseph P. Waldholtz's plan to circumvent FECA's regulatory scheme. A determination by a state court that the funds that Joseph P. Waldholtz contributed to Enid '94 in the name of Enid Greene were, in fact, obtained from D. Forrest Greene by fraud should preclude the Commission from concluding that D. Forrest Greene knowingly assisted Joseph P. Waldholtz in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

B. The General Counsel's Probable Cause Recommendation Ignores
Voluminous Evidence of Joseph P. Waldholtz's Uncanny Ability to Dupe
Much More Politically Astute Individuals Into Violating FECA.

The General Counsel's probable cause recommendation is based, to a very large degree, on the General Counsel's incredulity that anyone with D. Forrest Greene's financial background could have been duped by Joseph P. Waldholtz into making millions of dollars in unsecured personal loans, much of which Joseph P. Waldholtz then channeled into Enid '94 in violation of FECA. General Counsel's Brief at 23. D. Forrest Greene's testimony is more than credible, however, once you know that Joseph P. Waldholtz had a decade-long track record of defrauding elderly individuals similar to D. Forrest Greene out of substantial sums of money. In addition to the crimes for which he was imprisoned, Joseph P. Waldholtz, in the decade prior to his guilty plea:

- Defrauded his grandmother, an elderly Alzheimer's patient, out of at least \$400,000;
- Forged and counterfeited Government National Mortgage Association ("Ginnie Mae") securities as part of his scheme to defraud his grandmother out of hundreds of thousands of dollars;
- Committed perjury in a state court proceeding initiated by his own father to recover the funds that Joseph P. Waldholtz had stolen from his grandmother;

- Defrauded his mother out of her entire life savings -- \$96.000 -- by inducing her to cash in her pension, take out a mortgage on the home she owned free and clear, and give the money to him to "invest" for her;
- Misappropriated at least \$100,000 from his employer. Republican National Committeewoman Elsie Hillman, and was fired for using her money for expensive hotel suites, first-class airline tickets, and lavish meals while travelling to Republican Party events on her behalf and while working as the Executive Director for Pennsylvania of Bush-Quayle '92;
- Caused Mrs. Hillman to violate the Federal Election Campaign Act's prohibition on contributing more than \$25,000 in any one year (2 U.S.C. § 441a(a)(3)) in 1990, 1991, and 1992 by failing to keep track of her political contributions, resulting in Mrs. Hillman having to pay a \$32,000 civil penalty;
- Converted contribution checks made out to the Utah Republican Party to his own use while employed as the Party's Executive Director;
- Committed bank fraud by using falsified tax returns showing more than \$250,000 in annual income from a now-known-to-be non-existent "Waldholtz Family Trust" to obtain a home mortgage from First Security Bank of Utah;
- Committed additional bank fraud violations by kiting checks between accounts Joseph P. Waldholtz maintained with Merrill Lynch, Pittsburgh National Bank, and NationsBank;
- Falsified Ms. Greene's 1994 and 1995 congressional financial disclosure statements:
- Forged Ms. Greene's endorsement on her congressional paychecks on two separate occasions and converted the proceeds to his own use;
- Committed three separate instances of tax fraud involving the tax returns Joseph P. Waldholtz filed for tax years 1992 through 1994; and
- Committed massive (more than 850) violations of the Federal Election Campaign Act and applicable FEC regulations while serving as treasurer of Enid '94 and Enid '96, as alleged in the complaint in MUR 4322.

Three of these documented misdeeds by Joseph P. Waldholtz are especially relevant, because they demonstrate his uncanny ability to manipulate individuals who were both more financially and politically sophisticated than D. Forrest Greene into unknowingly violating FECA. as well as his ability to avoid detection for multiple violations of FECA and FEC regulations.

1. Elsie Hillman.

In MUR 3929, Joseph P. Waldholtz's former employer, Republican National Committeewoman Elsie H. Hillman. agreed to pay \$32,000 in civil penalties to the Commission to resolve allegations that she committed multiple violations of the Federal Election Campaign Act during 1990, 1991, and 1992.

Joseph P. Waldholtz served as chief of staff to Mrs. Hillman (as well as Executive Director for Pennsylvania for Bush-Quayle '92) from 1988 until 1992, when he was terminated for allegedly spending more than \$100,000 of Mrs. Hillman's money on expensive hotel suites, first-class airline tickets, and lavish meals while traveling to Republican National Committee meetings and other Republican Party events around the country. Kovalski & Heath, Waldholtz Lost Job Over Finances in 1992; Sources Say Husband of Congresswoman Was Fired by RNC Member, Wash. Post, Nov. 17, 1995, at A3. (Exhibit V). 10.

As a member of the Republican National Committee and a wealthy woman, Mrs. Hillman was constantly solicited for political contributions. As her chief of staff, Joseph P. Waldholtz advised Mrs. Hillman on her political giving and handled the day-to-day task of actually conveying contribution checks to their intended recipients (Exhibit W). Joseph P. Waldholtz directed Mrs. Hillman's accountant, Hugh Joyce, to issue checks for her political causes and wrote the cover letters transmitting the checks to candidates and their campaign committees (Exhibit X). It is reasonable to assume that Joseph P. Waldholtz's duties included keeping track of the extent of Mrs. Hillman's political giving.

After Mrs. Hillman fired Joseph P. Waldholtz for abusing his expense account, she instructed her private attorney. Wendell Freeland, to conduct a review of the political

Mrs. Hillman, who is well known in both political and philanthropic circles, apparently chose not to press charges so that she could keep this a private matter.

Joseph P. Waldholtz served as her chief of staff. Mr. Freeland soon discovered that Mrs. Hillman had exceeded the Federal Election Campaign Act's \$25,000 annual limit on individual political contributions (2 U.S.C. § 441a(a)(3)) in 1990, 1991, and 1992 -- usually by a substantial amount. Mrs. Hillman exceeded the \$25,000 annual limit by \$16,670 in 1990, by \$10,000 in 1991, and by \$12,600 in 1992. Mrs. Hillman voluntarily disclosed these violations to the Commission and agreed to pay a \$32,000 civil penalty.

Joseph P. Waldholtz is at least partially responsible for Mrs. Hillman's violations of the Federal Election Campaign Act. More importantly, Joseph P. Waldholtz's relationship with Mrs. Hillman is eerily similar to his relationship with D. Forrest Greene: He took advantage of an elderly person who trusted him, stole their money, and used it to finance a lavish lifestyle as well as his efforts to establish for himself a reputation as a political power broker. Moreover, Joseph P. Waldholtz's tenure as Mrs. Hillman's chief of staff demonstrates that he harbored a flagrant disregard for federal election law long before he ever met D. Forrest or Enid Greene. Finally, the fact that Joseph P. Waldholtz's mishandling of Mrs. Hillman's political contributions was not uncovered until after he left her employ demonstrates his uncanny ability to flout election law while avoiding responsibility for his actions.

2. Republican Party of Utah.

Joseph P. Waldholtz's trail of politically sophisticated victims did not end with Mrs. Hillman. He was named acting executive director of the Utah Republican Party in April 1993. Within two months, he embezzled nearly \$1,500 from the Utah Republican Party by simply taking fourteen checks made payable to the Utah Republican Party that were apparently given to him at a party fund raising event and depositing them into his personal checking account.

Neither the state party chairman, Stan Parrish, nor the state party's outside counsel, Kevin Anderson, had any idea that these funds had been misappropriated. The embezzlement was not discovered during any of the state party's annual external audits. Indeed, the theft only came to light when Enid Greene retained the accounting firm of Coopers & Lybrand to perform a forensic reconstruction of the bank accounts of Enid '94 and Joseph P. Waldholtz. It was counsel for Enid Greene that informed the Utah Republican Party that it, too, had been victimized by Joseph P. Waldholtz. Wilson, *Utah GOP Leader Says Joe Took From the Party, Too*, The Salt Lake Tribune, December 10, 1995, at A19. (Exhibit Y).

3. Huckaby & Associates.

Finally, and most importantly, Joseph P. Waldholtz was able to manipulate one of the most technically sophisticated federal election law experts in the country, Stan Huckaby, a man who had served as the treasurer of the Bush/Quayle '92 presidential campaign committee, into filing more than half a dozen blatantly false reports with the FEC.

In mid-June 1994, KayLin Loveland, the assistant treasurer of Enid '94, approached Enid Greene with concerns about the accuracy of the FEC reports prepared by Joseph P. Waldholtz. Enid Greene Dep. at pages 166-167. Enid Greene's immediate reaction was to hire a nationally recognized FEC accounting firm, Huckaby & Associates, to prepare the rest of the Enid '94 FEC reports. Moreover, Enid Greene directed Huckaby & Associates to do whatever it took, without regard to cost, to ensure that Enid '94 was in full compliance with all FECA requirements:

I told [Stan Huckaby] that I wanted him to do everything that was necessary not only from this point forward, but to look at other reports to make sure everything was correct. If [the earlier FEC reports] were not [correct], to amend them. He was to spend whatever it took to make sure they are correct. I told him if you ever have a problem just call me.

Enid Greene Dep. at page 161.

Enid Greene retained highly respected professionals to ensure that Enid '94 was in complete compliance with all FECA requirements. They failed her utterly. Between July 15, 1994 and January 30, 1995, Huckaby & Associates prepared and filed seven FEC reports on behalf of Enid '94. Incredibly, Huckaby & Associates prepared these reports based solely on the word of Joseph P. Waldholtz, whose conduct they were supposed to be overseeing. Huckaby & Associates never obtained any documentation to support the information that was provided to them by Joseph P. Waldholtz. Moreover, no one from Huckaby & Associates ever even called Enid Greene during the campaign to inform her that they were having difficulty documenting the committee's contributions and expenditures. Enid Greene Dep. at 161.

Joseph P. Waldholtz was able to deceive one of the nation's outstanding experts on federal election law into preparing not one, not two, but *seven* completely fabricated FEC reports. The General Counsel was aware of this fact more than a year ago, and yet he is incredulous that D. Forrest Greene could not see through Joseph P. Waldholtz's machinations and discern the unimaginable: that his new son-in-law had taken the money that he had borrowed from D. Forrest Greene to supposedly care for his sick mother and her financial difficulties and was using it to finance his wife's congressional campaign.

The only thing incredible about this entire series of events is that the allegations against D. Forrest Greene ever made it past the reason to believe stage. Given the voluminous evidence provided to the General Counsel by counsel for D. Forrest and Enid Greene, the most minimal of investigations should have shown that there was no credible evidence to believe that D. Forrest Greene was a willing participant in Joseph P. Waldholtz's criminal scheme.

V. CONCLUSION.

The General Counsel's recommendation that the Commission find probable cause to believe that D. Forrest Greene violated 2 U.S.C. §§ 441f, 441a(a)(1)(A) and 441a(a)(3) is based on nothing more than the General Counsel's subjective belief that a person of D. Forrest Greene's financial sophistication could not possibly have been duped by Joseph P. Waldholtz into making millions of dollars in unsecured personal loans, much of which Joseph P. Waldholtz then channeled into Enid '94 in violation of FECA. However, the scienter requirement of section 441f requires that the General Counsel must demonstrate that it is more probable than not that D. Forrest Greene knew both that (1) funds he provided to Joseph P. Waldholtz were subsequently contributed to Enid '94 in the name of Enid Greene, and (2) he was participating in a deliberate plan to evade FECA's regulatory scheme. Moreover, a determination that D. Forrest Greene violated section 441f is a necessary prerequisite to any determination that he also violated sections 441a(a)(1)(A) or 441a(a)(3). If the Commission does not believe that there is probable cause to believe that D. Forrest Greene violated section 441f by making a contribution in the name of another, then the Commission may not find that there is reason to believe that he violated either of the monetary limits on contributions.

Contrary to the General Counsel's recommendation, any fair evaluation of all the evidence adduced in these matters can come to no other conclusion than that there is no probable cause to believe that D. Forrest Greene violated section 441f, and, therefore, no probable cause to believe that D. Forrest Greene violated sections 441a(a)(1)(A) or 441a(a)(3). The General Counsel simply does not believe D. Forrest Greene's repeated assertions under oath that he was unaware that Joseph P. Waldholtz was contributing funds he had obtained from D. Forrest Greene by fraud to the Enid '94 campaign. Yet nowhere in his brief does the General Counsel

Šć.

discuss – much less refute – the documentary evidence discovered and provided to the General Counsel's office by counsel for D. Forrest and Enid Greene that corroborates D. Forrest Greene's testimony that he was defrauded by Joseph P. Waldholtz. As discussed in section IV.A. above, the three password-protected documents that were retrieved from Joseph P. Waldholtz's laptop computer – shielded from discovery by the passwords "HELP," and "LIE" – by themselves establish that D. Forrest Greene was a victim of Joseph P. Waldholtz, rather than a co-conspirator.

Mr. Greene is a 79-year-old veteran of World War II, who served his country, his community, and his family honorably. *Nothing* in Mr. Greene's personal or professional life could remotely suggest that, in 1994, Mr. Greene would abandon a lifetime's practice of honor and honesty and conspire with Joseph P. Waldholtz to break federal laws. Moreover, a Utah state court has already determined that Joseph P. Waldholtz victimized D. Forrest Greene. The General Counsel showed no deference whatsoever to the prior ruling by a Utah state court that the funds that Joseph P. Waldholtz contributed to Enid '94 in the name of Enid Greene were, in fact, obtained from D. Forrest Greene by fraud. This prior ruling should preclude the Commission from concluding that D. Forrest Greene *knowingly* assisted Joseph P. Waldholtz in making a contribution in the name of another.

Finally, the General Counsel's probable cause recommendation rests, to a very large degree, on the General Counsel's incredulity that anyone with D. Forrest Greene's financial background could have been duped by Joseph P. Waldholtz into making millions of dollars in unsecured personal loans, much of which Joseph P. Waldholtz then channeled into Enid '94 in violation of FECA. D. Forrest Greene's testimony is more than credible, however, once you know that Joseph P. Waldholtz. long before he ever met D. Forrest Greene, had a long track

record of defrauding individuals much more financially and politically sophisticated than D. Forrest Greene out of substantial sums of money. More importantly, the record shows that Joseph P. Waldholtz was able to manipulate the federal election laws to his own advantage while under the supervision of very sophisticated political operatives, including a member of the Republican National Committee. Elsie Hillman, the chairman of the Utah Republican Party. Stan Parrish, and one of the most technically sophisticated federal election law experts in the country. Stan Huckaby.

For all of the foregoing reasons, the Commission should conclude that there is no probable cause to believe that D. Forrest Greene violated 2 U.S.C. §§ 441f, 441a(a)(1)(A) and 441a(a)(3).

Respectfully submitted,

Charles H. Roistacher

Brett G. Kappel

Powell, Goldstein, Frazer & Murphy, LLP

1001 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Phone: (202) 347-0066

Fax: (202) 624-7222

Counsel to D. Forrest Greene

::ODMA\PCDOCS\WSH\91786\1

CAPTFOL HILL

LARGEST CIRCULATION OF ANS

The Capitol Newspaper

Vol. 5, No. 23

Wednesday June 10, 1998

MINIMUM SECURITY



Joe Waldholtz, former unpaid chief of staff to his then wife, Rep. Enid Greene Waldholtz, at Allenwood Federal Prison Camp.

Joe Waldholtz in prison: slimmer, sober and penitent

By Eamon Javera

loe Waldholtz, inmate number 20396-016, walked into the visitor's room at the Allenwood Federal Prison Camp in central Pennsylvania Monday morning to tell the tale of his fantastic rise and fall as Congress' most spectacular election law

But the first words out of his mouth were a lie, his ex-wife Enid Greene said lat-

As he stepped into the interview room this week, Waldholtz told an interviewer, "Enid sure was angry when I told her I was going to talk to you.

Enid, reached by telephone at her home in Salt Lake City, said that was a lie - Joe had, in fact, told her he was not going to break his press silence. This is vin-tage Joe Waldholtz," Greene said. This shows the extent of the games he continues to play, even in prison."

Waldholtz, tanned by outdoor exercise and nearly 300 pounds slimmer than the 487 pounds he weighed at his peak, is serving a 37-month sentence for election

His daily routine consists of rising at 5:30 a.m., often followed by a morning run on the jogging trail of the prison compound, which has no fences. Then comes breakfast, which is served in Allenwood's communal cafeteria. Next, he heads to work. Each inmate has a task each day -

Waldholtz says he has worked at the complex's power plant, then as a clerk for the camp's parenting and job skills program, and now in general maintenance in his dormitory-style building, Unit C.

He also attends substance abuse counseling sessions "very, very regularly," saying, "I've spent a lot of time working on sobriety and a lot of time working on the physical

His arrest and the subsequent revelations that he had embezzled more than \$4 million from his father-in-law and used it to finance his wife's congressional campaign brought down the career of Rep. Enid Greene Waldholtz (R-Utah), who hadn't completed her first term when the scandal SECONTINUED ON PAGE 36

TV stations ration campaign advertising, citing high demand

By Lindsay Sobel

Due to record-breaking spending on primaries this year, the demand for political advertising time has been so high that television stations cannot - or will not sell candidates all the time they would like

As a result, candidates are charging television stations with silencing debate. while stations insist that they are doing their best to balance the overwhelming demands of candidates with their own need to run a profitable business.

"It doesn't seem like too much to ask to make time available to candidates who want to debate important issues," said Steve McMahon, a Democratic media consultant. "Stations would rather run Pizza Hut ads than ads for candidates, because stations make more money on Pizza

Stations are required to offer reason-

able advertising time to federal caudidates - but not state and local ones and to offer equal time to all candidates in the same race. Since stations must offer candidates lower rates, commercial advertising is more profusble for the stations

Alan Buckman, director of sales for the television station KPIX in San Francisco. was amazed at the demand for ad time for the California primaries this month. "We anticipated it to be large, but more mones kept coming in and coming in." he said "Far more than the representances for the candidates initially told us

If they could have, they would have bought every ad on the station," he said As a result of beaut demands by Democratic gubernatorial hopefuls Al Cherchi and Jane Harman, "When we looked at what they wanted, we basically cut them way back." he said.

Susan Neisloss, media liaison for KCBS-O CONTINUED ON PAGE 6

Idaho delegation backs funds for rancher dad of staffer

By lock Friedly

The Idaho congressional delegation is backing unusual legislation that would compensate private ranchers who will be displaced as the Air Force prepares a bombing range on federally owned grazing lands.

The idea of using public funds to reimburse ranchers for land they don't even own has caused environmental activists and federal land management officials alike to fear the precedent it could set.

But what also has raised eyebrows is that only one rancher is expected to benefit:

Bert Brackett, a long-time political supporter of Idaho Republicans whose daughter, Jam. is a legislative assistant here in Washington for one of the backers of the hill, Sen. Larry Craig (R-Idaha).

Craig's office said Jani Brackett has played no role in the matter. "She's kept entirely out of the loop on anything deal. ing with this legislation, as well it should be," said Craig Press Secretary Michael Francisen, "I couldn't even talk to her. She didn't know anything about this."

Furthermore, supporters must that the legislative language - authored by Sen B CONTINUED ON PAGE 11

eggs in one basket Senators from same state put

By Mary Lynn F. Jones

Virginia Democrat Chuck Robb was wary about joining the powerful Armed Services Committee when he was first elected to the Senate in 1988.

Despite his extensive Marine background, including nine years of active duty, Robb, who joined the Foreign Relations Committee at the time, didn't ask for a seat on the committee that alreadvincluded the state's senior member. former Navy secretary and then-ranking

Republican John Warner.

While Robb said he was ultimately reenvited to the committee by former Panel Chairman Sam Nunn (D-Ga.) and several of the service chiefs, his initial reluctance isn't a surprise considering Senate protocol and electoral prospects. Stacking a committee with two same-state senators, who could favor their home state in committee business and pursue policy areas too narrowly focused to satisfy broader voter interests, was considered unuiso

When two senators from the same with

are on the same committee, that state is unrepresented on other committees dixt also affect a state's interests. Senators can especially extend their influence by taking sears on the Finance, Appropriations and Budget commuters

Now, however, the two Old Dominion senators are part of a trend in the 105th Congress; 15 sets of same-state senators serve on at least one committee together. and two pairs over on two committees to gether. Nine pais hall boundifferent pai-

OF CONTINUED OF PAGE 12

Waldholtz in prison: slimmer, sober, penitent

CONTINUED FROM PAGE 1

Sec.

Grene said Waldholy is a psychopath and a har, and that his schemes to deficuld others was cent when he is released from prison — which, depending on his good behavior, could come as early as December or January.

Waldholtz, dressed in a tan prison outfit and white New Balance sneakers, considers himself like any other disgraced political who can go to prison, learn his lessons, and return to society. He plans to get an MBA degree upon his release and says he will start life anew — away from political Washington, away from Enid in Utah, and away from his angry family in Pennsylvania.

Ile attributes much of his problem to substance abuse that started with marijuana and painkillers and blossomed to include injecting heroin by the time he was caught.

Asked why he pretended to be the heir to a \$400 million fortune while he defranded his new family after his marriage to Enid, Waldholtz said, "Obviously, it made me feel better about myself, I don't think it takes a rocket scientist to see that it fits with the substance abuse and weight problem."

But Enid, now living with the couple's almost-3-year-old daughter, Elizabeth, is unforgiving. "What else do you expect him to say? He has no remorse. ... he is not rehabilitated, he is not a normal person. ... I have to now live with this for the rest of my life."

Greene said she is finally happy with her life, but that she wants to go back to work soon, either as a lawyer or for a large Utah corporation. She says her future won't necessarily include politics, that she "would like to rebuild my reputation." Politics can wait. "If that opportunity arises at some point in the next 40 years, maybe I'll do it, but it's not something I need to do again."

Waldholtz, asked when his charade began, said, "God, I can't give you any specific on that, but it was something that was there for a long time. In politics, people like to pretend they're a lot of things that they're not, or to shift things ever so slightby.... It's the spin, the image, a lot of people are caught up in all that."

But he now says the mirage he presented to the public was: "Stupid, Unnecessary, And very much a part of the past."

Waldholtz said his scheme to secretly defraud Enid's father of millions of dollars they would need to run a second congressional campaign in 1994 began when Enid was defeated in her first race for Congress in 1992, against Rep. Karen Shepherd (D-Utah). Neither of us could stomach the lost. And I'm not proud of that. Not proud of that asff.

He said he knew that they would need more money than Enid could or would raise well before the 1994 election, and that's when he started his periodic calls to Enid's wealthy father, Forrest Greene, for "loans" that he then funneled into their campaign — in violation of election law.

Enid, he maintains, was unaware of his plans. "Was Enid ambitious? Yes, Misdeeds? No. Enid is a supremely talented individual, one of the finest public speakers? we ever seen. Enidwill definitely be back. And I'll be rooting from the side-



Joe Waldholtz at Allemwood Prison Camp.

Ultimately, the Department of Justice agreed with Enid's argument that she had been duped by Waldholtz and cleared her of wrongdoing — albeit in a process that she now says was carried out for too long by prosecutors out to make their own reputa-

tions.

Talking about the method of his crimes. Waldholtz speaks in the passive voice, almost as if he is refuseful to admit that it was he who committed the crimes he describes. 'A lot of stories were circulated

about supposed gibts, supposed troots supposed real estate swaps, that stall been talked to death." he said "Stories serie insented for invisination that we needed."

After losing weight during his length court battle. Waldholiz has been 125 pinnids sour coming to Albemsool, which is sometimes decreted as "Club Fed." for its imminium security histories for pitsoness — the greatest of which is that the complex is not fenced in. Thining any of his daily runs on the compound's jogging track. Waldholiz could easily dip into the woods and make a break for it. He doesn't to escape, he said, because that will only bring him more — and harder— time.

Nestled next to a pincate golf course and a technical college, a passerior could easily mistake. Affenwood for nearby Susquehanna High School Miss of the mistates are there for non-violent drug offenses, but 27.9 percent are there for extraord, builders or feard. Only 1.8 percent are there for white-collar crimes, according to a to a steet provided by the Bureau of Poisson.

Waldholtz still finds time for lessing activities that he has friends in Washington would be shocked at. His excess weight and pastipallor gone, he sass he's focused on keeping the weight off.

He say "I run, do aerobo's, bit weights Play a mean game of hoece. Fin a very aedent supporter of the softball team.... [This] shocks people to death because I was Mr. Indom Person."

"I'm doing a lot of things I baven't done before," he said, "and I'm healthier for it."

Joe Waldholtz: In his own words

Joe Waldholiz sat down with The Hill at Allenwood Federal Prison Comp Monday to break his media silence about his crimes. He spoke with The Hill's Eamon Javers. Following are excepts from the conversation.

SUBSTANCE ABUSE

Q: How long were you in rebab, and what was that process like?

A: 10 days. ... Rehab was necessary, rehab was tough, and rehab was the beginning of an opportunity that you know is carrying forward to this day.

Q: You were addicted to paintillers, and you were using regular street grade heroin?

A: You know it's funny, I still kind of cringe in talking about that. I had a problem with narcotics for years. When someone weighs 487 pounds, obviously, ou're not real comfortable with yourself, And I was in politics and the narcotics teemed to help. There were times of sobriety in there, but it was like a dry drunk.

Q: When did you first start using drugs? When you were a kid? When you were already working in politics?

A: Experimenting as a kid.

Q: And what kinds of drugs did you start with?

A: Silly stuff that everyone starts with.

Q Marijuana ...?

A: Right. Uh. but it didn't become a problem until years later. I deeply segret

my substance abuse. It makes sense to me now, the weight, the abuse of narcotics. It makes sense. And its pretty simple to understand what was wrong. I wish I'd done that at the time.

Q: There are a lot of people who would burst out taughing to hear Joe Waldholtz talking about living ille in a Isw-abiding fashion. You're a guy who, after you were bested for the first time for check kiding, continued to write had checks, continued to do drags, so that was a warning ocare that didn't about you straight. Why would two years, three years at Club Fed shock you straight?

A: Uh, I was pretty sick at the time. I'm not now, There were things I needed to deal with that I didn't.

Q: What's changed?

A: Sobriety, for one. Which is just an incredible, incredible thing. I almost consider it a gift. I don't want to so und preachy—people in Utah would accuse me of sounding Mormon, but it's just different. I really messed up. And I just couldn't seem.... I couldn't see a way out of it. There were times I really didn't think I was going to make it through.

THE CHARADE

Q: [Y]ou. from very early in your relationship with Enid, affected the life of a multi-millionaire, and gave everyone the impression that you were a very wealthy man, that you had access to this Waldholtz family trust. Why did you feel the need to da that?

A: Well first, the specifics like that were never discussed, at that point. Obviously, it made me feel better about myzelf. I don't think it takes a rocket scientist to see that that fits in with the substance abuse and the weight problem.

Q: When did you first start letting on that you were a wealthy man, wealthier than you really were?

A: God. I can't give you any specific on that but it was something that was there for a long time. In politics, people like to pretend they're a lot of things they're not, or to shift things ever so slightly.

Q: You say shift things ever so slightly in politics?

A: Yeah, it's the spin, the image, a lot of people are caught up in all that.

Q: Did it start out as, like you say, ever so slightly and then enowhall?

A: Right. Stupid. Unnecessary. And very much a part of the past.

Q: You're the boy who crici wolf in this scenario. You, eccording to all the allegations, stole movey from your grandmoder, your employer is Fittsburgh, from your father-in-law, to the tune of \$6 railing, how were also using ideas mercotics diaring the course of this whole time. Once you were cought, you continued to use the associate, continued to write had checks, and stead credit cards from your on lawyers during this whole time frame. Some people say a continued to write had checks, and stead credit cards from your one lawyers during this whole time frame. Some people say a continued to prace of

that you're either sick with some kind of mental instability or that there's some malicious kind of anger. Get back at society. Why did you do it?

A: Um, again, not responding to all of those allegations, some of which are interesting, why did I do the election thing? To win.

O: What about the \$4 million that came from Mr. Greene?

A: Towin

ا الله

Q: What about the lavish lifestyle, the silk ber, the terrific suits, the great shoes.

A: Those are the things that I kind of have a problem with because I don't want you're living on borrowed, if not stolen,

to point the finger at any others in this situation. I'll just say that at the weight that I was, clothing was hardly one of our biggest expenses for me. And I'm just going to leave it there because I have nothing negative to say about anyone. And I have read with some good humor some of the things that have been written and that's okay. That's political spin and that's fine. Army-Navy surplus stores. Clothing was not a big expense of ours, for me. That's laughable and I just won't get into anything else about that

Q: What about the art? At the same time

money, at that point from Mr. Greeze, but you're buying \$25,000 pieces of est.

A: I'm not going to get involved in the tennis match back and forth of "He said. She said." I'm just going to leave that stuff where it is, I don't really. Again, I find it surprising, if not funny that of the things that were commented on in our lifestyle, it was my ties and my suits. And I'll just leave it there. No one else needs to be hurt or dragged through anything. It's just past.

CLUB FED

Q. Is this Club Fed? Is this bard time? A. Club Fed doesn't exist. Is it hard time? No, but Club Fed does not exist. ... It's not a gulag, but this isn't Maus, and you can't go home and get on with your family and friends, and you're not as productive as you could be. So rather than looking at the negative side of it by saving, it's Qub Fed, he kut weight, isn't that great, I ... a lot of people come here, and like I said earlier, this choice is made. You can either be on this negative trip or you need to figure out what you need to do and you go do it, and that's entirely up to the individual, because the system doesn't provide for that, and most people think it really shouldn't. It's up to the individual to make it or take it. I've chosen to make it.

THE CLINTON SCANDALS:

Q. Are you keeping up with the Clinton

A. Let me just say this about our presdent. ... At some point, speaking as one who lived a charade, it's time for the charade to end. I take no pleasure or pride in saying that, but I find what the White House does offensive. I look forward to a change in leadership there. ... I'm in here for election fraud, so after everybody is done throwing mud at me for what I did, I really think I can actually speak about that issue. And there's just too much of it. It's just gone too far, too often. And they're very slick and very good at how they deal it, and my hat's off to them for that. But it really does hurt the country. and it certainly diminishes the office. I know, because I did the same thing.

Q. Ironically the same judge ...

A. I know. I've read. Judge [Norma Holloway] Johnson [the same judge presiding over the Clinton case] is a fair judge. I think she ...

Q. She was pretty tough on you. though.

A. She was right. I agree with what she said. ... I think it's going to be quite an interesting summer for the Clinton White

GREENE BRIEF Greene says loe won't reform

Former Rep. Enid Greene (R-Utah) did not rule out a return to politics in an interview Monday, although she called the possibility unlikely.

Almost there years after the scandal that drove her from office, Greene said her attenuon is fully focused on her daughter, Elizabeth, who will be 3 years old in August. There's no question she will be hurt by this. She won't get a normal Ozzie and Harriet lifestyle, like lenpected the would." Greene said. "To add to that is this whole strange and sordid episode. I want to make sure she's grounded so she doesn't wake up some day and say. There's something wrong with me because of who my fainer is."

As for Jor Waldholtz, Greene expects him to continue to swindle people when he gets out of pulment year. "He will find somebodyeke. There's no question that when you deal with him. If he wants to make you a believer, he is very constructing."

- EAMONYAVERS

TT'S OUR BIRUHDAY. BUT YOU GET THE GIRT



It's our 7th birthday and we'd love to celebrate it with you! From coast to coast and in-between, we've been matching busy professionals. It's been such a great year, we're giving you the gift. Not only do you get to meet and date fun, well-educated professionals like yourself, you also get a little present from us. Hey, whose birthday is it anyway?

So give us a call. We can't wait to meet you!

Dating For Busy Professionals



Washington D.C. 202,466,6699

Baltimore 410.659.6699

life, love & dessert.

New York Chicago Los Angeles Mami Washington D.C. Houston Philadelphia: Dallas Atlanta Phoenix Columbus Richmond Indianapolis Wilmington Baltimore New Jersey Long Island San Antonio San Diego Newport Beach Buca Raton Minneapolis - Austin Ft. Worth Cincinnatic Stamford Milwaukee

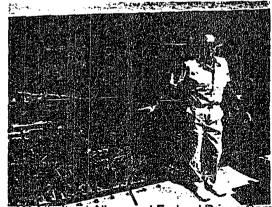
Sunday. June 14, 1998

Waldholtz Is Ready to Tell His Side of Story

By TONY SEMERAD
@1998. THE SALT LAKE TRIBUNE

MONTGOMERY,

Penn. — In January 1995, Joe Waldholtz sat beside his wife, newly elected Utah Congresswoman Enid Greene Waldholtz, amid the noise and grandeur of the U.S. House of Representatives chamber in Washington. Chills ran down his



oe Waldholtz at Allenwood Federal Prison Camp near Montgomery in central Pennsylvania. (Jennifer Domenick)

spine. Around them were the fresh faces of the 104th Congress, riding a historic Republican groundswell and ready to reform the nation. A humbled President Clinton soon would take the podium to deliver his State of the Union.

Two years later, Waldholtz watched Clinton's annual speech from a folding metal chair in federal prison, divorced, bankrupt, abandoned by family, battling drug addiction.

Found out as one of the most spectacular con men in congressional history, the brash political consultant once known for his biting wit, election insights and huge waistline now faced three years behind bars for trashing the U.S. Constitution.

Questions echoed loudly about his rise and fall. How could so many -friends, his family, campaign aides, the Utah Republican Party, creditors, and even banks -- have been fooled?

CLICK HERE EXTRA:

- The Joe Waldholtz/ Enid Grene Archive
- Transcript of Joe Waldholtz Interview

More importantly, how could Enid Greene, a sharp GOP lawyer whose 1994 election victory to Utah's 2nd Congressional District was built on Joe's massive fraud, not have known of the deceit? Last week, in a five-hour interview with *The*

Salt Lake Tribune, his first with a Utah media outlet since landing in jail, Waldholtz may have raised more questions than he answered.

He illegally influenced -- some say, stole -- a federal election. Waldholtz convinced Enid's father to give him \$4 million, half of which Joe funneled into her campaign, in violation of federal law. He pilfered nearly \$1.7 million from his enfeebled grandmother and secretly mortgaged his mother's home. Waldholtz wrote hundreds of bad checks, and stole credit cards from friends, aides and even his defense lawyers to feed his lavish appetites.

Almost every word from his mouth was a lie.

Now he says there never was a plan, that he made up Utah's worst political fraud as he went along.

"There was no orchestrated agenda and that may be the hardest thing for people to believe," Waldholtz said in the visitors room at Allenwood Federal Prison Camp in central Pennsylvania.

"It was irrational. Madness. Absolute madness," he said, adding he was driven by drug and weight problems that pushed him well above 330

pounds.

"You can't be that heavy and you can't abuse narcotics that badly and not have some issues that need to be dealt with," said Waldholtz.

Looking thinner, tan, and claiming to have changed during his prison stay, the 35-year-old Pittsburgh native said he takes full responsibility for his titanic spree of political and financial corruption.

"I have a lot of amends to make for a whole lot of destruction in my past," he said. "I desperately wish that it hadn't happened like this and

that so many people hadn't been hurt."

And, although he worked for months with federal prosecutors probing for evidence that might implicate his wife, then a high-profile protege of House Speaker Newt Gingrich, Joe now says bringing her down was the last thing on his mind.

"I never wanted to testify against Enid," Waldholtz said. "I wasn't going to sell Enid down the river."

Court documents indicate he may be lying - once again.

His Pittsburgh family, seeking financial help for Joe's senile grandmother Rebecca Levenson, forced him into bankruptcy in 1996 in an attempt to find money he may have been hiding. Documents filed in Pennsylvania's Allegheny County, declaring Joe an official debtor, paint him as a willing but unbelievable witness against Enid.

"The United States Attorney's Office had intended to use the testimony of the Debtor in some type of criminal charge against his ex-wife but declines to do so upon the current recent revelation in the news media that Joseph Waldholtz was a heroin addict," read one court motion, filed by

Pennsylvania bankruptcy trustee Gary L. Smith.

Federal prosecutors officially cleared Enid of wrongdoing in November 1996, though she and her attorneys have refused to release a one-page letter sent to her at the time by Assistant U.S. Attorney Craig Iscoe, stating prosecutors' views on the case.

In sworn U.S. Bankruptcy Court documents, Greene's attorneys maintain that the federal prosecutors' yearlong investigation `concluded there was no credible evidence that Ms. Greene was involved in Joseph P. Waldholtz's criminal endeavors." All of Joe's allegations to the contrary, they contend, `were absolutely false."

Enid resigned from Congress after only one term and has spent the years since then as a full-time single mother, raising the couple's daughter Elizabeth, now almost 3.

Throughout the barrage of publicity attending the Waldholtz saga, she has insisted she was completely taken in by Joe, and knew nothing of his crimes -- until it was too late. Today, she says she views Joe's plea bargaining with prosecutors as another of his masterful manipulations.

'The longer he made up stories about me, the longer he could stay in hotels, eat meals at taxpayers' expense, and avoid going to jail," she said in an interview from her Salt Lake City home.

As Joe now surfaces again, in lengthy interviews with *The Tribune* and

The Hill, a weekly publication covering Congress, Green and she worries he will be turned into a folk hero, a kind of humorous Utah politics version of skydiving robber D.B. Cooper. "This isn't funny," she said.

Greene called his claims about his motives and the lack of a plan

'classic Joe. It's a way of saying, 'It's not my fault.'

"You can't do what he did without knowing exactly what you're doing," said the 39-year-old attorney. "Lots of people have substance-abuse problems and weight problems, but they don't do what Joe did."

Early Days: Otherwise known as Inmate No. 20395-016, Joe Waldholtz seemed nostalgic as he recounted the early days.

Joe and Enid met through the Young Republicans in spring of 1991. He was a GOP operative and senior aide to Republican National Committeewoman Elsie Hillman of Pennsylvania; she, an ambitious deputy chief of staff to ex-Utah Gov. Norm Bangerter.

Waldholtz said he was immediately attracted to Greene's intelligence, "her beautiful face, her beautiful hair." Charming and urbane, Joe decided

shortly after that he wanted to marry her.

According to Joe and court documents, his pattern of financial lawbreaking was well under way as early as 1988, as he syphoned funds from his grandmother's stock account to finance his heavy personal spending.

The son of a Pittsburgh dentist, he picked up restaurant tabs, jetted around town in limousines, and wore expensive suits. He told Enid and friends he had a non-existent family trust with "more money than God."

Waldholtz moved to Utah in 1992, ostensibly to provide advice and financial help to Enid's first campaign for the Salt Lake County-centered 2nd Congressional District, against Democrat Karen Shepherd. Their romance blossomed.

The '92 campaign ``was terribly run," said Waldholtz. ``It's been said that the Democrats thought they were running against the Mormon kiddie show -- and they were right."

Seeds of the couple's destruction were sown with Enid's Nov. 3, 1992, election defeat, he said.

"When you see the person you love most in the world curled up in a ball on the floor of her bedroom, sobbing because she'd lost and let down her party, her state, her friends, her family, her supporters -- and you really felt she lost to someone who didn't represent Utah -- it has an effect."

In fact, he said, it turned the Greene-Shepherd rivalry into a holy war. Specifically, Waldholtz resolved that money would be no object in Greene's next campaign. They never would be outspent again.

Joe said he especially resented that some Mormon Utahns had voted against Enid because she was not married. Even so, Waldholtz hotly denied their marriage in August 1993 was born of political expediency.

"I know people said it was a merger, not a marriage," he said. "No. We were very much in love."

But he said that their wedding -- an expensive, high-society gala at the then-Hotel Utah -- was a bizarre blend of personal ritual and political aspiration. They were married by Utah Gov. Mike Leavitt, before a roster of 870 guests drawn from the ranks of Utah elected officials.

"It was a mini-rehearsal for a state convention," Waldholtz said.

They honeymooned in Hawaii, and stiffed the hotel on the bill. There

began a spate of high living and widespread debt.

Using at least 17 different credit cards, shopping at stores such as Nordstrom and Saks Fifth Avenue, records show, Waldholtz tore through purchases of jewelry, fine clothing, expensive furniture, catered meals, even bottled water for the dog, Winston.

"Winston never drank Perrier!" Waldholtz said indignantly at one

point. "It was Mt. Olympus bottled water."

Enid has contended she found these expensive tastes foreign to her own wealthy but frugal upbringing, but she went along.

"That really makes my teeth on grind," Waldholtz responded. But then, he stopped short of blaming Greene. "I'm just going to take it on the chin and say, 'OK.'... Our lifestyle speaks for itself. It was a mess."

Meanwhile, said Waldholtz, preparations for the 1994 campaign began almost immediately. In early 1993, Joe took a job as an unpaid director of the Utah Republican Party, using it to deflect possible GOP challengers.

He had reservations about Greene being a candidate, he said, but she was adamant about running again to vanquish her past failure.

"I understand that Enid disputes that, but I distinctly recall that conversation," he said. "I'm not saying I didn't want her to run, but it was a crusade. Look at what we did. Look at how it was."

Once launched, Waldholtz said, the Enid '94 campaign lived in constant terror of a repeat, last-minute loss. On Joe's advice, she changed her hairstyle and sought to project a more gentle image.

A low-grade panic permeated the office -- made worse as Joe's trail of bounced checks became increasingly impossible to ignore. Creditors called daily, and Waldholtz put them off with ever more convoluted explanations: A checkbook was stolen. An aide screwed up. Mail was lost. A bank account was inadvertently closed.

Enid ignored or misread the warning signs because "the candidate doesn't get involved in campaign minutia," said Joe.

Ensuing months would, in fact, bring five-figure alarms. American Express sued Joe for \$50,000 in April. A \$60,000 bounced check to Salt Lake department store O.C. Tanner became public in June. Staff members started bailing out.

The paranoia grew daily, said Waldholtz, as his fear of being found out became all-consuming.

In Pittsburgh, Joe's father Harvey Waldholtz and his cousin Steve Slesinger had caught on to his theft of the grandmother's estate and pursued a lawsuit, demanding that he account for the cash. Joe stonewalled on request after request, offering his usual litany of excuses.

Privately, Waldholtz tossed back growing numbers of prescription painkillers sent to him in cigarette cartoons by friends in Pittsburgh, a habit that started with back pain but soon swung out of control. His weight swelled.

"I was numb," he said. "I was out of my mind."

Desperate for money, Waldholtz claimed his family trust was tied up in litigation and looked elsewhere.

He said he devised a transfer of cash to the campaign from Enid's millionaire father, D. Forrest Greene, in exchange for a bogus piece of Pittsburgh real estate. He convinced Enid it was legal on paper, and they approached Mr. Greene, who agreed.

The deal eventually would bring some \$1.8 million into Enid '94 coffers, and fuel an avalanche of slick TV advertising -- all in gross

violation of federal limits on campaign donations. Aware of the complex transaction, Enid would publicly call the infusion "family money."

Waldholtz likened the overkill to marshalling "more forces than it took

to drop a bomb on Hiroshima."

Of the involvement of Enid's parents, Waldholtz said, "All they were trying to do was help their daughter. Mr. and Mrs. Greene never tried to hurt anyone."

As they watched the campaign go crazy, Enid '94 aides have said Waldholtz jealously isolated Greene from anyone who might tip her off to his wrongdoing -- a claim Joe denied. Rather, he countered, their marriage isolated them both.

"It was a sick, co-dependent relationship," Waldholtz said.

Why was she so gullible?

"Sometimes people believe what they want to believe and what they need to believe," said Joe, who added that Greene's apparent blindness "was all about winning. Winning. Winning."

Win, they did. Greene beat incumbent Shepherd and independent candidate Merrill Cook in November 1994, after leading that year's third most expensive House campaign victory in America.

Enid announced she was pregnant shortly after winning. Their marriage

would unravel within 12 months.

With Enid distracted by her job in Congress, Waldholtz said he ran even further amok. Their millionaire lifestyle continued, now from an \$800,000 Georgetown townhouse. The angry bill collectors were legion. When the congressional office chief of staff, David Harmer, resigned, Joe took over his duties.

Invoking his wife's name, Waldholtz continued to secure cash from his father-in-law as ``loans" and moved money frantically between bank accounts in Washington, Utah and Pittsburgh, hoping to stave off creditors.

Improprieties with a House credit union account led the FBI to quietly begin an investigation.

Elizabeth, their daughter, was born Aug. 31, 1995.

The Collapse: By then, the world was closing in. Press stories on their finances mounted. Badgered by Enid and her brother-in-law, Jim Parkinson, to explain the rising tide of red ink, Waldholtz finally concocted a story that board members for the family trust were flying to Washington to meet him. On Nov. 11, 1995, Joe and Parkinson headed to Washington's National Airport to meet them.

Then Waldholtz ditched Parkinson at the airport and disappeared.

"There wasn't a lot of planning," said Joe. "I was winging it."

His head filled with ``fear, incredible sadness, thoughts of suicide," he hopped a train to Springfield, Mass. ``because that's where the train took me." He holed up in a hotel room and watched himself on CNN every 20 minutes. His vanishing made national headlines.

"It was surreal. I felt like a hunted animal," he said. Enid filed for divorce. The feds issued a warrant for his arrest.

He moved on to Philadelphia, skipping from hotel to hotel to cover his tracks. Skulking through the lobby of the Philadelphia Marriott, he ran into attorney and friend Jeff Liebmann.

"Joe, how are you? I'm reading that Enid just filed for divorce," Waldholtz recalled Liebmann as saying.

"Can't say it's one of my best days," Joe replied.

The lawyer persuaded Joe to return to Washington, which he did two days later. After surrendering to prosecutors, he emerged from the federal courthouse to a phalanx of reporters, "their camera shutters clicking like a swarm of bugs."

He hit rock bottom six months later, when his first meeting with Enid since his disappearance touched off a deep depression. "I felt like I was dead," he said. Out on bond, Waldholtz flew home to Pittsburgh, secured

a bag of heroin and started using.

Within days, he felt 'real sick" and checked into a drug rehabilitation clinic. When the heroin use and continued check bouncing came to light, a federal judge revoked his bond and threw him into a Washington, D.C., jail to await sentencing.

In October 1996, out of excuses, he pleaded guilty to tax, bank and

election fraud and went to prison for 37 months.

From the Ashes: Today, Waldholtz says his stay at Allenwood Federal Prison Camp near Montgomery, Pa., has given him a second chance. If his good behavior continues, he could be released to a halfway house later this summer.

Waldholtz has lost nearly 120 pounds through daily jogging and weight lifting. He is active in prison educational programs and has worked three prison jobs. Waldholtz claimed that extensive drug counseling has helped him mend and understand his life.

He said he wants to go back to school, get an MBA and find work away

from politics and spin.

Greene said nobody has a greater interest in believing Waldholtz has reformed his life. "That is the quintessence of being a parent, putting the interests of your child before your own," she said. But she finds it impossible to accept.

"Nobody who has dealt professionally or personally with people like Joe gives me any hope that he can change his behavior," she said. "My family and I have been through the fires of hell. He can't hurt me

"But I worry about Elizabeth."

 $\mathbf{Z} \succeq$

© Copyright 1998, The Salt Lake Tribune

All material found on Utah OnLine is copyrighted *The Salt Lake Tribune* and associated news services. No material may be reproduced or reused without explicit permission from *The Salt Lake Tribune*.

Contact The Salt Lake Tribune or Utah OnLine by clicking here.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Docket No. CR 96-0143

Docket No. CR 96-0185

VS.

Washington, D. C.

JOSEPH P. WALDHOLTZ,

November 7, 1996

9:45 a.m.

Defendant

VOLUME 1-B

PARTIAL TRANSCRIPT OF SENTENCING PROCEEDINGS BEFORE THE HONORABLE NORMA HOLLOWAY JOHNSON UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

CRAIG ISCOE, AUSA

U. S. Attorney's Office 555 4th Street, N.W. Washington, D. C. 20001

For the Defendant:

A. J. KRAMER, ESQUIRE Federal Public Defender 625 Indiana Avenue, N.W. Washington, D. C. 20004

(EXCERPT)

Official Court Reporter:

GORDON A. SLODYSKO

4806-A U. S. Courthouse Washington, D. C. 20001

(202) 273-0404

Computer-Aided Transcription of Stenographic Notes

(EXCERPT)

1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE DEFENDANT: Thank you, Your Honor, for allowing me the opportunity to address this Court.

Yesterday, as I was reading a newspaper, I came across an Associated Press story of a person who graduated from college and cheated on an exam. And this gnawed away at her and she made it public, and she said something that I think very much applies to me: Once you cheat, then you have to cover it with a lie. And that's precisely what I have done. She said, in that process, you deceive all the people into thinking you are something you are not. And that's something that I've done. She ended it by saying something that a friend of mine said to me, a good friend from Pittsburgh, some months ago: The truth really does set you free. And I have found that to be the case in the past six weeks.

This past year has been a nightmare for so many people: my family, my friends, my former wife, and her family. To them, I would like to express my deepest regret and sorrow for my actions. My behavior was deplorable. And I alone am responsible. I did commit crimes against the United States. It is my responsibility, and my responsibility alone. actions go against everything that I was taught and everything that I thought I believed in.

I became active in politics because I revere this To have violated its laws and hurt the people I love,

in addition to causing a scandal for the 104th Congress that I cared so much about, is something that will haunt me the rest of the days of my life.

Mr. Kramer has stated some family history that, while true, does not take blame away from me. I am thankful, Your Honor, for the treatment that I have received. Both diseases are under control because of this treatment. It's up to me from here, and I do want to stay well.

I want to pay whatever debt to society is appropriate in the opinion of this Court. In the days that follow, I look forward to having the chance to earn back the opportunities and responsibilities that have always gone hand-in-hand with citizenship in a free society. Having failed to be responsible, I know that I must suffer the consequences of my actions. I accept that honestly and wholeheartedly. Only by doing so can I begin the painful, but rewarding, process of rehabilitation.

Thank you.

THE COURT: Thank you, Mr. Waldholtz. You may remain there.

I have ruled on all of the issues that your attorney raised with respect to the presentence report save the last one that we discussed, and that is, whether or not there should be an upward departure in your case. And I am convinced that the total offense level should be adjusted upward to account for your continuing criminal activity while you were on release.

Under 18 U. S. Code, Section 3553(b), a sentencing court may

impose a sentence outside the applicable guideline range if

there exists an aggravating or mitigating circumstance of a kind

or to a degree not adequately taken into consideration by the

Sentencing Commission. And I believe such aggravating

circumstances are present in your case.

The Court of Appeals for this Circuit has held that post-offense misconduct is a proper basis for an upward departure in offense level if it shows extensive criminal involvement. You admitted at a September 26, 1996, hearing before me that you had committed numerous offenses during the four-month period of your release pending sentencing. And I don't have to go through all of those things; they have been gone through extensively here. But you did perpetrate fraud upon your family and friends and continued this practice, or your practice, of writing checks for which there were no funds on deposit.

I do not think, however, that your case fits into the enhanced penalty under Section 2J1.7, because you have not been convicted of a federal crime. But because your post-release conduct is not adequately taken into consideration by the Sentencing Commission, I am going to impose a three offense level upward departure.

I'm very pleased to hear what you had to say today, Mr.
Waldholtz. You seem to be able to capture what is not only the

Court's concern, but the community's concern as well, and to state that you recognize your wrongdoing and that it will not occur again. But I think that was one of the reasons why I released you on your personal bond, and actually, I guess from the day I released you, you have engaged in conduct that you knew was criminal, that you knew was wrong, even if it were not criminal. And you knew that you had promised me faithfully right here in this courtroom that you would not commit another criminal offense while you were on your release.

Despite your guilty pleas, Mr. Waldholtz, you continued, even until this minute, to shift the blame for your action. You have told the probation officer in the past that you revere the Constitution. You have told that to me here today. And that you are a law-abiding person. You have suggested that you were corrupted by politics. I'm simply not convinced by your self-serving statements that you were corrupted by politics, or even that you revere the Constitution. Anyone who reveres the Constitution would certainly, I think, be willing to obey the laws of the country.

You convinced your wife, apparently -- your ex-wife, and her family that you had a substantial family trust fund when in fact there was no such trust fund. The bank fraud in this case was a very sophisticated scheme, requiring precise timing. And not only that, but it required an intimate knowledge of the financial institutions you deceived. The campaign finance fraud

shows careful planning, as you repeatedly concealed and
misreported campaign contributions. Your continued deceit after
your guilty plea, where you would cheat even your own father,
demonstrates that you are a person who simply will not conform
your conduct to that which is required of all citizens: Obey
the law. Obey the laws of this country.

Rather than carrying out your important duties as a campaign treasurer, you attempted to win that election without any consideration of truth. You shamelessly spent funds in the Enid Greene campaign that you knew could not be used for campaign purposes. You continued on your illicit course, hiding the use of these funds from the public. Had illegal funds not been used in the campaign, or had your illegal actions been revealed before the election, the outcome of the election may well have been different. That is, of course, something none of us will ever know; and, thus, we will never know the full effect of your conduct.

But there is one thing, Mr. Waldholtz, that is certain, and that is, you abused the public trust. No sentence that this court has been authorized to impose is sufficient to atone for your attempts to manipulate an election, for bank fraud, for false statement, for failure to report campaign contributions, and for assisting in filing a fraudulent tax return. The burden of public disgrace that you alone have placed upon yourself and your family is also insufficient.

Č. ٠. = 1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Perhaps, however, the person who shall suffer most because of your criminal conduct is your infant daughter. certainly have not taken a step to consider how your crimes and misdeeds shall forever stain her.

Mr. Waldholtz, pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that you, Joseph P. Waldholtz, be, and you shall be, placed in the custody of the U. S. Bureau of Prisons for a term of 37 months.

I failed it write it in, but I think under the new guidelines, the minimum is 37 months.

> MR. KRAMER: Yes.

This term consists of 37 THE COURT: For 37 months. months on Count 21 in Docket No. 96-143 and 37 months on Count One in Docket No. 96-185, 12 months on Count Two in Docket No. 96-185, and 36 months on Count Three in Docket No. 96-185. counts shall run concurrently.

This is an upward departure based on your continued criminal activity while you were pending sentencing and because the seriousness of your offense in Docket No. 96-185 is underestimated by the guideline range as there was no loss in that case.

You shall pay restitution -- let me find that. shall pay restitution in the sum of \$10,920. Upon release from imprisonment, Mr. Waldholtz, you shall be placed on supervised release for a term of five years. This term consists of five

years on Count 21 in Docket No. 96-143, three years on Count
One, Docket No. 96-185, and one year each on Counts Two and
Three in Docket No. 96-185, all terms to run concurrently.

Within 72 hours of your release from custody to the Bureau of Prisons, you shall report in person to the probation office in the district to which you are released. While on supervised release, you shall not commit another federal, state or local crime; you shall comply with the standard conditions of probation or supervised release as adopted by this Court; and you shall comply with the following additional conditions:

Number one, you shall not possess a firearm or other dangerous weapon for any reason. Number two, you shall not use or possess an illegal drug, nor shall you associate with any known drug dealers or be present where illegal drugs are used, sold or distributed.

You shall participate in a substance abuse treatment program, which program may include testing to determine if illegal substances are being used, at the direction of the Probation Office.

You shall pay restitution to the Internal Revenue
Service in the amount of \$10,920, at the rate to be determined
by the Probation Office.

Now, Mr. Waldholtz, I do find, after serious thought, that you do not have the ability to pay a fine, the costs of imprisonment or supervision, and because I have also entered

12

13

14

15

16

17

18

19

20

21

22

23

24

25

that restitution requirement. So, for those reasons, you will 1 not be indebted to us for a fine or the costs of imprisonment. 2 It is, however, further ordered that you must pay a special 3 assessment fee on Count 21 in Docket No. 96-143 of \$50, and \$50 on each Counts One and Three in Docket No. 96-185, and \$25 on 5 Count Two in Docket No. 96-185, for a total special assessment 6 7 fee of \$175. This assessment should be paid as soon as possible, and certainly, if not paid before you complete your 8 period of incarceration, it must be paid within 60 days of your 9 release from prison. 10

I shall not make the recommendation that your attorney has requested. Mr. Waldholtz, I am very familiar with the boot camp, and I do not believe that it is appropriate. But I do believe that what it does offer to younger, less sophisticated individuals is something that you should strive for, and that is, to stay off illicit drugs and to devote your fine mind — you have to have a good mind to be able to do what you have done, all right? To devote your fine mind to obeying the law.

And it is so ordered.

MR. KRAMER: Your Honor, in light of that, just one further request. And I discussed it with Mr. Iscoe before, who told me that he would not object. If Your Honor would recommend Allenwood as the place of incarceration. Mr. Waldholtz has an elderly father, who would like to visit him, and that would be the easiest place.

I would be very happy to recommend THE COURT: 1 But understand me, that's all I can do, is 2 3 recommend. THE DEFENDANT: I understand, Your Honor. THE COURT: I cannot tell the Bureau of Prisons where 5 to imprison anyone. Even if I had recommended the boot camp, 6 that would have been all that it would have been, is a 7 recommendation. So, I certainly have no objections to 8 recommending that you be placed at an institution where your 9 father will be in a position to visit you. 10 THE DEFENDANT: Thank you. 11 MR. KRAMER: Thank you. 12 If there is nothing further --13 THE COURT: MR. KRAMER: Your Honor, the counts of the original 14 15 indictment need to be dismissed. 16 THE COURT: Yes. Yes, Your Honor. At this time, the 17 MR. ISCOE: Government dismisses the remaining counts of the indictment in 18 19 Case Number 96-143. 20 THE COURT: All right. And 185, all counts he's pled 21 to. 22 MR. ISCOE: He pled to all counts in 185. 23 THE COURT: All right. So it's so ordered. 24 MR. KRAMER: Thank you.

THE COURT: The best of luck to you, sir.

Ŭ. 10

1

2

3

4

5

6

7

8

9

11

12

13

14

15

16

17

18

19

20

21

22

23

24

THE DEFENDANT: Thank you, Your Honor.

(Recessed at 11:15 a.m. and resumed at 11:25 a.m.)

THE COURT: We are resuming the case of United States versus Joseph Waldholtz, Criminal No. 96-143 and Criminal No. 96-185.

Mr. Waldholtz, I'm sorry to have to bring you back, but I failed to advise you of your right to appeal. You have an absolute right to appeal your sentence in this case; you have the right to appeal any other rulings that I made here contrary to those which you and your attorney argued. All right? appeal must be noted within ten days of today's date.

I can assure you that if you wish to appeal any or all issues that were ruled on contrary to your legal view, Mr. Kramer will be happy to note that appeal for you and in a timely fashion.

You also know, sir, that because I still don't know what happened between you and the attorneys you had retained, because I did not know what had happened there, I asked Mr. Kramer, who heads our Federal Public Defender Service, to represent you. And apparently we have been able to determine that that was appropriate. So, if you wish to appeal, you can go straight to the Court of Appeals, and you can ask them, the judges up there, to appoint counsel for you in the Court of Appeals.

So, I'm sorry I forgot to do that.

25

}

1	MR. KRAMER: I apologize for overlooking that, too,
2	Your Honor.
3	THE COURT: Yes. I really am sorry.
4	MR. KRAMER: He has been advised, but thank you very
5	much.
6	THE DEFENDANT: Yes. Thank you.
7	THE COURT: Thank you very much. And you may step back
8	now.
9	MR. ISCOE: Thank you, Your Honor.
10	THE COURT: Mr. Iscoe, I'm sorry, but while he was
11	still here, it was important to do that.
12	MR. ISCOE: I'm glad Your Honor caught it. I would
13	have realized it by the time I got back to my office, perhaps,
14	but I'm glad Your Honor thought of it sooner.
15	THE COURT: Thank you.
16	(Proceedings concluded at 11:27 a.m.)
17	-
18	
19	
20	
21	CERTIFICATE OF REPORTER
22	I certify that the foregoing is a correct transcription from
23	the record of proceedings in the above-entitled matter.
24	
25	Official Court Reporter

ORRIN G. HATCH

ROBERT L DIBBLEE ADMINISTRATIVE ASSISTANT

131 Russell Senets Office Building

Telephone: (202) 224-5251 TDD (202) 224-2849 -meil: senstor_hatch@hetch.senste.gov

Websits: http://www.senste.gov/-hatch/

United States Senate

WASHINGTON, DC 20510-4402

September 25, 1998



Ms. Enid Greene 2164 South Berkeley Street Salt Lake City, UT 84109

Dear Enid:

I understand that the Federal Election Commission has initiated an investigation into your 1994 campaign and your father, D. Forrest Greene. Incredibly, the press reports imply that the Commission's investigation is focused on your conduct and your father's, rather than the proven criminal actions of your former husband and 1994 campaign treasurer, Joseph P. Waldholtz.

I recall when your former husband became the subject of a nationwide manhunt in November, 1995, after he fled a FBI bank fraud investigation. As you know, shortly before his disappearance, I met with you and Mr. Waldholtz to discuss the allegations that had been leveled against him. It was apparent to me at that meeting that you still truly believed in your former husband's innocence and were completely ignorant of his various criminal schemes. I found Mr. Waldholtz's explanation of his banking problems lacking in credibility and I told him that he would go to jail if he did not straighten out the situation right away. He disappeared shortly thereafter.

Given the intense scrutiny that this case received from both the media and the U.S. Attorney for the District of Columbia, it seems to me that the Commission should be able to complete its investigation in short order. The facts of the case are well known. As you know, a former reporter for the <u>Deseret News</u>, Lee Benson, has recently published a book, <u>Blind Trust</u>, that reviews all of the facts in this case in great detail. I can attest to the accuracy of those portions of the book that are relevant to your lack of knowledge of Mr. Waldholtz's schemes.

I trust that the Commission will act appropriately to conclude its investigation as quickly as possible. If I can be of any assistance whatsoever, please do not hesitate to contact me.

Orrin G. Hatch

Sincerely

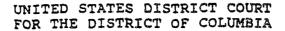
United States Senator

OGH:rld

P.S. Good beck

PRINTED ON RECYCLED PAPER

FILE COPY



Holding A Criminal Term

Grand Jury Sworn In On October 7, 1994

UNITED STATES OF AMERICA

Criminal No.:96-0143

Grand Jury Original

v.

Violations:

JOSEPH P. WALDHOLTZ, Defendant. 18 U.S.C. § 1344 (Bank Fraud)

18 U.S.C. § 2 (Aiding and Abetting)

> 18 U.S.C. § 982(a)(2) and (b)(1()B)

(Criminal Forfeiture)

INDICTMENT

4

FILED IN GPEN COURT

The Grand Jury Charges:

MAY - 2 1996

COUNTS ONE THROUGH TWENTY-SEVEN CLIERK, LAS, DISTRICT COURT

DISTRICT OF COLUMBIA

Introduction

1. At all times material herein:

A) The defendant JOSEPH P. WALDHOLTZ was the husband of Enid Greene Waldholtz, the elected Congressional Representative of the Second Congressional District of the state of Utah. JOSEPH P. WALDHOLTZ worked full-time in Representative Congressional office, but received no salary. Joseph and Enid Waldholtz were legal residents of the state of Utah, but also had a residence in the District of Columbia, where they lived while Representative Waldholtz was serving in Congress.

- B) The defendant JOSEPH P. WALDHOLTZ and his wife, Enid Greene Waldholtz, maintained joint checking accounts at the Wright Patman Congressional Federal Credit Union (hereinafter sometimes referred to as "CFCU"); located in Washington, D.C., and at First Security Bank of Utah (hereinafter sometimes referred to as "FSB"), located in Salt Lake City, Utah.
- C) The Congressional Federal Credit Union and First Security Bank of Utah were financial institutions as defined by Title 18 U.S.C. § 20.

The Congressional Federal Credit Union/ First Security Bank Check Kite

- 2. Beginning on or about January 1995 and continuing up to on or about March 3, 1995, the defendant JOSEPH P. WALDHOLTZ devised a scheme and artifice to defraud the Congressional Federal Credit Union and First Security Bank by executing a check kiting scheme whereby he made cross deposits into Account Number 106413 at CFCU and into Account Number 051-10075-51 at FSB, making it appear that there were substantial balances in both accounts. In fact, as the defendant JOSEPH P. WALDHOLTZ knew, the actual balances in the accounts were negligible or negative.
- 3. A standard general practice applied by financial institutions concerning deposits and access to deposited funds is as follows: When an account holder deposits a check into his account at a bank, that bank sends the actual check, by United States mail or other means, to the bank upon which the check was drawn. The bank upon which the check was drawn then determines if the person who wrote the check has sufficient funds in his account

to pay the check. If he does, the bank upon which the check was drawn pays the check by sending the money to the bank into which the check was deposited as a credit. Once the bank has received the deposited funds from the bank upon which the check was drawn, then the customer who deposited the check is permitted to use the money. There is usually a delay of several days between the time that a check is deposited and the time that the customer is given access to the funds.

- 4. In contrast to the general banking practices described in the proceeding paragraph, it was the practice of the CFCU and FSB, in certain circumstances, to give a customer immediate credit for his deposited check. That is, the customer would be allowed to write checks based on the deposit immediately, without waiting for the deposited check to be sent to the bank upon which it was drawn and without waiting for that bank to determine whether the account had sufficient funds to cover the amount of the check. When this was done, the bank allowed the customer the temporary use of its own money expecting the deposited check to be paid. This practice is referred to as paying a check against uncollected funds.
- 5. It was the policy of CFCU to pay checks drawn on uncollected funds checks deposited into the customer's account.
- 6. It was the policy of FSB to pay checks drawn on uncollected funds checks in cases in which a bank officer approved the payment of such checks.
- 7. As part of the scheme and artifice to defraud, the defendant JOSEPH P. WALDHOLTZ made numerous misrepresentations to

rsb regarding the source and availability of funds to which he claimed to have access, thereby causing FSB to pay checks based on uncollected funds. For example, JOSEPH P. WALDHOLTZ repeatedly promised large transfers of funds into his FSB account from a trust, supposedly with a value of millions of dollars, located in Pittsburgh, Pennsylvania when, in fact, as JOSEPH P. WALDHOLTZ knew, no such trust existed.

- 8. It was a part of the scheme and artifice to defraud that the defendant JOSEPH P. WALDHOLTZ used his knowledge of the practice of CFCU and FSB of giving him immediate credit for his deposits to carry out a check kiting scheme.
- 9. It was a part of the said scheme and artifice to defraud that:
- A) JOSEPH P. WALDHOLTZ would write checks on his account at FSB knowing that he did not have sufficient funds to cover them;
- B) JOSEPH P. WALDHOLTZ then deposited these checks at CFCU where he knew he would get immediate credit in his CFCU account;
- C) As a result JOSEPH P. WALDHOLTZ'S CFCU account balances would reflect more money than was actually available;
- D) JOSEPH P. WALDHOLTZ then would write checks on his CFCU accounts knowing that he did not have sufficient money to cover them, since his account balance was artificially inflated by deposits of insufficient funds checks from FSB.
- 10. It was a further part of the said scheme and artifice to defraud that JOSEPH P. WALDHOLTZ, through the exchange of worthless

checks back and forth between the CFCU and FSB, did artificially inflate the balances in the accounts and obtain the use of monies, funds and credits to which he was not entitled. At the height of the scheme, the defendant's accounts at CFCU and FSB showed a combined apparent positive balance of approximately \$752,000, while the two accounts in fact had a combined negative balance of approximately \$197,000.

- 11. During the course of this check kiting scheme, JOSEPH P. WALDHOLTZ wrote approximately \$1,445,000 worth of worthless checks drawn on his account at FSB which he deposited into his account at CFCU. Similarly, the defendant wrote approximately \$1,515,000 worth of worthless checks drawn on his account at CFCU which he deposited into his account at FSB. During the scheme, JOSEPH P. WALDHOLTZ did not any make any deposits into the accounts which reflected money legitimately available to him.
- 12. During the course of this check kiting scheme, the defendant wrote checks drawn on his CFCU account to parties other than FSB worth approximately \$66,000. These checks were paid by CFCU. During the course of this check kiting scheme, the defendant also wrote checks drawn on his FSB account to parties other than CFCU worth approximately \$141,000. These checks were paid by FSB. But for the defendant's scheme to defraud, CFCU and FSB would not have paid these checks.
- 13. On or about March 2, 1995, CFCU and FSB discovered the defendant's check kiting scheme and CFCU froze the defendant's checking account. After CFCU and FSB reviewed the defendant's

accounts and exchanged certain of the defendant's checks, the banks determined that the result was that Waldholtz's account at FSB had an overdraft of approximately \$209,000.

of Columbia, the defendant JOSEPH P. WALDHOLTZ for the purpose of executing and attempting to execute the scheme and artifice to defraud both banks as set forth in paragraphs one through twelve above, did knowingly deposit, and caused to be deposited, checks into CFCU and FSB, in the amounts listed below, drawn on the Waldholtz accounts at CFCU and FSB.

Count	Date	Source	Deposited	
One	2/3/95	CFCU Check No. 101	FSB	\$ 10,000.00
Two	2/3/95	FSB Check No. 732	CFCU	\$ 10,000.00
Three	2/6/95	FSB Check Nos. 751, 752, 753	CFCU	\$ 30,000.00
Four	2/7/95	CFCU Check No. 102	FSB	\$ 20,000.00
Five	2/8/95	FSB Check No. 776	CFCU	\$ 25,000.00
Six	2/9/95	CFCU Check No. 103	FSB	\$ 50,000.00
Seven	2/10/95	FSB Check No. 778	CFCU	\$ 65,000.00
Eight	2/13/95	CFCU Check No. 104	FSB	\$ 65,000.00
Nine	2/14/95	FSB Check Nos.	CFCU	\$ 85,000.00
		781, 782, 783, 784	_	
Ten	2/15/95	CFCU Check No. 106	FSB	\$100,000.00
Eleven	2/16/95	CFCU Check No. 108	FSB	\$ 50,000.00
Twelve	2/16/95	FSB Check No. 793	CFCU	\$100,000.00
Thirteen	2/17/95	CFCU Check No. 110	FSB	\$ 50,000.00
Fourteen	2/21/95	CFCU Check No. 112	FSB	\$150,000.00
Fifteen	2/21/95	FSB Check No. 801	CFCU	\$100,000.00
Sixteen	2/22/95	CFCU Check No. 113	FSB	\$100,000.00
Seventeen	2/22/95	FSB Check No. 806	CFCU	\$100,000.00
Eighteen	2/23/95	FSB Check No. 808	CFCU	\$150,000.00
Nineteen	2/24/95	CFCU Check No. 114	FSB	\$150,000.00
Twenty	2/24/95	FSB Check No. 809	CFCU	\$150,000.00
Twenty-one	2/27/95	CFCU Check Nos.	FSB	\$250,000.00
4	, ,	116, 117		• "
Twenty-two	2/27/95	FSB Check No. 826	CFCU	\$150,000.00
Twenty-three	2/28/95	CFCU Check Nos.	FSB	\$200,000.00
•	•	127, 128	-	,
Twenty-four	2/28/95	FSB Check No. 830	CFCU	\$150,000.00

Twenty-five Twenty-six	3/1/95	CFCU Check No. 120	FSB	\$250,000.00
	3/1/95	FSB Check No. 814	CFCU	\$150,000.00
Twenty-seven	3/2/95	FSB Check No. 832	CFCU	\$250,000.00

TOTAL \$2,960,000

(In violation of 18 United States Code, Sections 1344 and 2) (Bank Fraud and Aiding and Abetting)

FORFEITURE ALLEGATION

- 1. The allegations of Paragraphs One through Fourteen of this indictment are realleged and by this reference are fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18 U.S.C. § 982 (a)(2).
- 2. As a result of the offenses alleged in Counts One through Twenty-Seven, the defendant, JOSEPH P. WALDHOLTZ shall forfeit to the United States all property constituting, or derived from, proceeds the defendant obtained directly or indirectly, as a result of such offenses, including but not limited to:
- a. \$209,000 in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was property constituting, or derived from, proceeds obtained directly or indirectly as a result of the bank frauds in violation of 18 U.S.C. §§ 1344, and 982.
- b. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant
 - (1) cannot be located upon the exercise of due diligence;
 - (2) has been transferred or sold to, or deposited with, a third person;

- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, U.S.C. Code 982(b)(1)(B) to seek forfeiture of any other property of said defendant up to the value of the above forfeiture property.

(In violation of Title 18 United States Code, Section 982(a)(2) and (b)(1)(B)) (Criminal Forfeiture)

A TRUE BILL:

FOREPERSON

Eric H. Holder, Jr. / ATTORNEY OF THE UNITED STATES IN AND FOR THE DISTRICT OF COLUMBIA



U.S. Department of Justice

United States Attorney

District of Columbia

Judiciary Center 555 Fourth St. N.W. Washington, DC 200011

May 29, 1996

Pamela Bethel, Esquire Barbara Nicastro, Esquire Bethel & Nicastro 2021 L Street, N.W. Suite 300 Washington, DC 20036

Joseph P. Waldholtz, Cr. Case No. 96-143 (NHJ)

Dear Ms. Bethel and Ms. Nicastro:

This letter sets forth the terms and conditions of the Plea Agreement which this Office is willing to enter into with your client, Joseph P. Waldholtz, regarding the charges in the above captioned-case and other matters presently under investigation.

CHARGES 1.

Mr. Waldholtz agrees to enter a plea of guilty in the United States District Court for the District of Columbia to one count of bank fraud (18 U.S.C. § 1344) and agrees to criminal forfeiture of \$14,910 (18 U.S.C. § 982(a)(2) and (b)(1)(8)) as charged in Count Twenty-One and in the Forfeiture Count of the Indictment returned against him in Criminal Case No. 96-143. addition, Mr. Waldholtz agrees to plead guilty to a three-count Information charging him with one count of making a false statement (18 U.S.C. § 1001), one count of making a false report to the Federal Election Commission ("FEC") (2 U.S.C. § 437g(d) and § 441a), and one count of willfully aiding or assisting in filing a false or fraudulent tax return (26 U.S.C. § 7206(2)). The Information will be filed on a date determined by the government. Joseph Waldholtz agrees that, for the purposes of this plea, venue for all charges is properly before the United States District Court for the District of Columbia and agrees to waive any challenges to venue.

2. FACTUAL ADMISSION OF GUILT

Pursuant to Rule 11(e)(6), Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, Mr. Waldholtz agrees to state under oath that the following statement of his actions is true and accurate. The government agrees that the following facts constitute all of the relevant facts of conviction.

The charges set forth in Section 1, above, arise from the following facts:

a. Bank Fraud

1. Offense of Conviction

Mr. Waldholtz pleads guilty to Count Twenty-One of the Indictment and admits that, as part of a scheme and artifice to defraud, on or about February 27, 1995, he deposited into a checking account at the First Security Bank of Utah ("First Security") two checks, numbered 116 and 117, drawn on a checking account at the Wright Patman Congressional Federal Credit Union ("CFCU") in the total amount of \$250,000, knowing that there were not sufficient funds in the CFCU account to pay those checks and intending to create the erroneous appearance that sufficient funds were available.

2. Relevant Conduct

From late January of 1995 through early March of 1995, Joseph Waldholtz engaged in a scheme and artifice to defraud First Security and CFCU through "check kiting" between joint checking accounts that he and his wife, Enid Greene Waldholtz, had at First Security (Account No. 051-1075-51) and CFCU (Account No. 106413). He began carrying out this scheme on February 3, 1995, by depositing into the First Security account a check for \$10,000 drawn on the CFCU account and depositing into the CFCU account a check for \$10,000 drawn on the First Security account. At the time he wrote those checks and made those deposits, Joseph Waldholtz knew that there were not sufficient funds in either account to cover the amounts of the checks.

Mr. Waldholtz continued to make cross deposits into the two accounts in order to make it appear that there were substantial balances in both accounts when, in fact, the actual balances were negligible or negative. In addition, Mr. Waldholtz wrote checks on both accounts to third parties. First Security and CFCU paid those checks because Mr. Waldholtz's actions made it appear that the accounts had sufficient balances to pay the checks. Between February 3, 1995 and March 2, 1995, First Security paid checks to third parties totaling approximately \$130,000 and checks totaling approximately \$11,010 to Mr. Waldholtz. During the same time

period, CFCU paid checks to third parties totaling approximately \$62,000 and checks totaling approximately \$3,900 to Mr. Waldholtz.

In reality, there were virtually no funds in either account to pay those checks. After CFCU and FSB discovered the check kiting scheme and exchanged certain checks, the Waldholtzs' account at First Security had a negative balance or overdraft of approximately \$209,000 and the account at CFCU had no overdraft. Mr. Waldholtz covered the overdraft by depositing into the First Security account money which was provided by Enid Greene Waldholtz's father, D. Forrest Greene.

b. False Statements and False FEC Reports

Joseph Waldholtz was the treasurer of Enid Waldholtz's 1994 Congressional campaign committee, which was called "Enid '94". ("the Committee"). As treasurer, Mr. Waldholtz was responsible for preparing various FEC forms and reports regarding the Committee's receipts and disbursements and was responsible for certifying that the Committee's submissions were "to the best of [his] knowledge and belief . . .true, correct and complete."

On or about January 31, 1995, Mr. Waldholtz signed the 1994 Year End Report (FEC Form 3) for Enid '94 and signed the Report to certify that it was true, correct and complete. Mr. Waldholtz then caused the Report to be filed with the FEC. At the time that he signed the Report and caused it to be filed, Joseph Waldholtz knew that the Report contained a substantial number of false statements of material facts and omissions of material facts and that the Report was not true, correct or complete.

During calendar year 1994, Enta Waldholtz's father, D. Forrest Greene, had deposited approximately \$2,800,000 into the personal bank accounts of Joseph and Enid Waldholtz. Joseph Waldholtz knew that during calendar year 1994 almost \$1,800,000 provided by Mr. Greene was transferred from the Waldholtzs' personal accounts to Enid '94. Joseph Waldholtz also knew that neither he nor Enid Waldholtz were receiving salaries during most of 1994 and that neither he nor Enid Waldholtz had sufficient personal funds, independent of those provided by Mr. Greene, to cover the transfers to Enid '94.

Despite the fact that he knew that the funds that were transferred from the personal accounts of Joseph and Enid Waldholtz to Enid '94 had been provided by Mr. Greene, Joseph Waldholtz reported on various FEC Reports, including the 1994 Year End Report, that the transferred funds represented Enid Waldholtz's personal assets. Mr. Waldholtz made those false statements and misrepresentations because he knew that the FEC regulations that limit campaign contributions to \$1,000 per

election cycle do not apply to contributions that a candidate makes with her own funds.

Mr. Waldholtz further admits that he created "ghost contributors" to Enid '94. Mr. Waldholtz willfully reported false names and addresses of alleged contributors to the Enid '94 campaign, even though he knew that the persons did not make contributions to Enid '94.

c. Willfully Aiding or Assisting in Filing a False or Fraudulent Tax Return

Joseph and Enid Greene Waldholtz were married in August of 1993, but decided to file separate federal tax returns for the 1993 tax year. During 1993, Enid Greene Waldholtz sold shares of securities that she owned which had appreciated in value. As a result of that appreciation, Enid Greene Waldholtz incurred and had the obligation to report a long term capital gain of approximately \$39,000.

Enid Greene Waldholtz told Joseph Waldholtz that she would have to pay income tax on that capital gain and, to prevent her from having to pay the tax, Joseph Waldholtz told Enid Greene Waldholtz that he would give her stock on which he said he had incurred a long term capital loss in excess of the amount of her capital gain. Joseph Waldholtz then provided Enid Greene waldholtz with the name of the stock that he falsely claimed to have given her and the date on which he claimed to have given the stock to her, the date that he claimed to have purchased the stock, the number of shares he claimed to have purchased, and its alleged basis.

Those figures created a phony-capital loss of more than \$56,000, which Enid Greene Waldholtz reported as a long term capital loss, thereby eliminating any tax liability for Enid Greene Waldholtz for the \$39,000 capital gain. Joseph Waldholtz knew that he did not own the stock, that he had not and could not give the stock to Enid Greene Waldholtz, and that the basis figures were false. Joseph Waldholtz knew that Enid Waldholtz would use the false information in preparing her 1993 tax return and that the information would create a false capital loss.

3. ADDITIONAL CHARGES

If Mr. Waldholtz completely fulfills all of his obligations under this Agreement, the United States Attorney's Office for the District of Columbia agrees not to bring any additional criminal or civil charges against him for conduct regarding: (1) bank fraud or check kiting involving First Security Bank of Utah, the Wright Patman Congressional Federal Credit Union, Merrill Lynch,

Pittsburgh National Bank, or NationsBank; (2) forgery or uttering of financial instruments involving First Security, CFCU or NationsBank checking accounts or Congressional paychecks; and (3) forgery of "Ginny Mae" securities; provided that he provides full information about all such matters pursuant to Section 6 of this Agreement.

In addition, if Mr. Waldholtz completely fulfills all of his obligations under this Agreement, the United States Attorney's Office for the District of Columbia agrees not to bring any additional criminal charges against him for conduct regarding (1) false statements or violations related to any FEC reports or other reports filed by any campaign committee or other organization supporting the 1992 Congressional campaign of Enid Greene or the 1994 and 1996 Congressional campaigns of Enid Greene Waldholtz; and (2) tax violations arising from the federal tax returns filed by Joseph Waldholtz separately, or jointly with Enid Greene Waldholtz, for the tax years 1992 through 1994, or from the 1993 federal tax return of Enid Greene Waldholtz; provided that he provides full information about all such matters pursuant to Section 6 of this Agreement.

The United States also agrees to dismiss all remaining counts of the Indictment at the time of sentencing.

By entering this agreement, the United States Attorney does not compromise any civil liability, including but not limited to any tax liability or liability to or regarding the Federal Election Commission, which he may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph one of this agreement. Mr. Waldholtz agrees to cooperate with employees of the Civil Division of the Internal Revenue Service ("IRS"), the Civil Division of the United States Attorney's Office, the Federal Election Commission and law enforcement agents working with those employees, in making an assessment of his civil tax and FEC liabilities. Mr. Waldholtz specifically authorizes release to the agencies and divisions specified above of information in the possession or custody of the IRS or FEC and disclosure of matters occurring before the grand jury for purposes of making those assessments.

The United States agrees that, apart from the conduct described in Section 2 of this Agreement, there is no other conduct which the government will assert as constituting "relevant conduct" as that term is used in Section 181.3 of the Sentencing Guidelines for the purposes of Mr. Waldholtz's sentence.

The United States further agrees not to initiate any other civil or criminal forfeiture actions against any property which it currently knows to belong to Mr. Waldholtz or for which the government currently knows that Mr. Waldholtz is a stakeholder or

potential stakeholder. The Office of the United States Attorney for the District of Columbia further states that it is not aware of any existing criminal charges against Mr. Waldholtz or of any pending investigation in which Mr. Waldholtz is a target in any other federal judicial district. The Office of the United States Attorney further agrees to bring no additional charges for any violations or potential violations of the District of Columbia Code resulting from the above described conduct.

4. POTENTIAL PENALTIES AND ASSESSMENTS

Mr. Waldholtz understands that (1) for the felony offense of bank fraud, he may be sentenced to a statutory maximum term of imprisonment of not more than 30 years and fined not more than \$1,000,000 (18 U.S.C. § 1344); (2) for the felony offense of making a false statement (18 U.S.C. § 1001), he may be sentenced to a statutory maximum of not more than five years and fined not more than \$250,000 (18 U.S.C. § 3571); (3) for the misdemeanor offense of causing a false Federal Election Commission Report to be filed he may be sentenced to a term of imprisonment of not more than one year and a fine of not more than \$25,000 or 300% of any contribution or expenditure involved in such violation (2 U.S.C. §§ 437g(d)(1)(A)) and 441); and (4) for the felony offense of willfully assisting in the filing of a false tax return he may be sentenced to a term of imprisonment for not more than three years and fined not more than \$250,000 (26 U.S.C. § 7206(2)). Mr. Waldholtz also understands that he will lose claim of title to money and property in the amount of \$14,900.

In addition, upon his release from incarceration, Mr. Waldholtz understands that he may be sentenced to a term of supervised release of not more than three years (18 U.S.C. § 3583). Pursuant to 18 U.S.C. § 3013, Mr. Waldholtz is required to pay a mandatory special assessment of \$50 for each of his felony convictions and of \$25 for his misdemeanor conviction. He agrees to pay this assessment at the time of sentencing. Mr. Waldholtz also may be sentenced by the court to a term of probation of not more than five years, 18 U.S.C. § 3561, and ordered to make restitution, 18 U.S.C. § 3556. The government and Mr. Waldholtz stipulate that there was no financial loss suffered by either FSB or CFCU and, therefore, agree not to ask the Court that Mr. Waldholtz be required to make restitution for the bank fraud.

Mr. Waldholtz also understands that a sentencing guideline range for his case will be determined by the Court pursuant to the provisions of the Sentencing Reform Act of 1984, see 18 U.S.C. § 3551 et seg.

In the event the Court imposes an unlawful sentence, or imposes a sentence outside the range provided by 18 U.S.C. § 3551 et seg., the parties agree that Mr. Waldholtz retains any and all

rights he may have to appeal or otherwise seek relief from any such sentence.

Mr. Waldholtz agrees that sentencing shall not take place until the government has determined that he has fulfilled his obligations under this agreement and that there is no longer a need for his cooperation. The government agrees that it will not unreasonably delay sentencing.

5. WAIVER OF CONSTITUTIONAL RIGHTS

Mr. Waldholtz understands that by pleading guilty in this case, he will be giving up the following constitutional rights: the right to be indicted by a grand jury for charges other than those in the present indictment, the right to plead not guilty, the right to a jury trial at which he would have the opportunity to present evidence, testify in his own behalf, cross-examine witnesses, and to be represented by counsel at any such trial. Mr. Waldholtz further understands that if he chose not to testify at such a trial, that fact could not be held against him. Mr. Waldholtz would also be presumed innocent until proven guilty, and the burden to do so would be on the government, which would be required to prove his guilt beyond a reasonable doubt. Waldholtz were found guilty, he would also have the right to appeal his conviction. Mr. Waldholtz also understands that he is waiving his right to challenge the government's evidence that the property described in Count Twenty-eight of the Indictment constitutes the proceeds of specified unlawful activity as that term is used in 18 U.S.C. § 982.

6. PROVISION OF INFORMATION

Mr. Waldholtz agrees that he will cooperate completely, candidly, and truthfully with all duly-appointed investigators and attorneys of the United States, by truthfully providing all information in his possession relating directly or indirectly to all criminal activity and related matters which concern the subject matter of this investigation and of which he has Mr. Waldholtz must provide information pursuant to this agreement whenever, and in whatever form, the United States Attorney's Office shall reasonably request. This includes, but is not limited to, submitting to interviews at such reasonable times and places as are determined by counsel for the government, providing all documents and other tangible evidence requested of him, and providing testimony before a Grand Jury or court or other tribunal. All costs of travel and expenses arising from any request by the government to provide assistance and cooperation pursuant to this paragraph will be borne by the government and not by Mr. Waldholtz.

7. INCARCERATION PENDING SENTENCING

The United States Attorney's Office waives its right to ask that Mr. Waldholtz be detained pending sentencing. The government agrees that, based upon the information currently known to it, Mr. Waldholtz poses neither a flight risk nor a danger to himself or the community as those terms are used in 18 U.S.C. § 3142. In the event the government becomes aware of any information to the contrary, the government will promptly notify Mr. Waldholtz, through his counsel, of such facts, and the reasons the government contends such facts would support a finding either of risk of flight or danger to the community. The government agrees not to oppose Mr. Waldholtz's request to remove court imposed restrictions on his travel within the United States and to permit him to travel domestically pending sentencing.

8. RESERVATION OF ALLOCUTION

To the extent not inconsistent with the factual recitation contained herein, the United States reserves the right to allocute fully at sentencing, to inform the probation office and the court of any facts it deems relevant, to correct any factual inaccuracies or inadequacies in the presentence report, and to respond fully to any post-sentencing motions. The government agrees that it will not seek an upward departure in Mr. Waldholtz's sentence.

9. SENTENCING GUIDELINES DETERMINATIONS

The parties understand that if Mr. Waldholtz completely fulfills all of his obligations under this agreement, the United States will recommend that he receive the benefit of a 3-level reduction in the sentencing guidelines' offense level, based upon his acceptance of responsibility within the meaning of § 3E1.1 of the United States Sentencing Guidelines ("USSG").

After the government has determined that there is no longer a reasonable need for Mr. Waldholtz's cooperation, the government (through the departure committee of this Office) will determine whether the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5) have been satisfied. If the factors have been satisfied, the government agrees to file a motion on behalf of Mr. Waldholtz under U.S.S.G. §5K1.1, thus affording the sentencing judge the discretion to sentence Mr. Waldholtz below the applicable guideline ranges. Mr. Waldholtz understands that the government has sole discretion whether to file a motion on his behalf under Section 5K1.1 of the Sentencing Guidelines.

Mr. Waldholtz understands that the final determination of how the Sentencing Guidelines apply to this case will be made by the court, and that any recommendations by the parties are not binding on the court or the U.S. Probation Office. The parties

agree that the failure of the court or Probation Office to determine the sentencing range in accordance with the recommendations of his counsel or the government do not void the plea agreement, nor serve as a basis for the withdrawal of Mr. Waldholtz's guilty plea. In addition, in the event that, subsequent to this agreement, the government receives previously unknown information which is relevant to the above recommendation, the government reserves its right to modify its position regarding the recommendations. However, the government agrees that, in the event that it receives any such previously unknown information, it will promptly notify Mr. Waldholtz of the nature and source of this information in sufficient time to permit Mr. Waldholtz to respond to this information.

10. BREACH OF AGREEMENT

Mr. Waldholtz agrees that in the event he fails to comply with any of the provision of this Agreement, or refuses to answer any questions put to him, or makes any material false or * misleading statements to investigators or attorneys of the United States, or makes any material false or misleading statements or commits any perjury before any grand jury or court, or commits any further crimes, this Office will have the right to characterize such conduct as a breach of this Agreement, in which case this Office's obligations under this Agreement will be void and it will have the right to prosecute Mr. Waldholtz for any and all offenses that can be charged against him in the District of Columbia, or in any other District or in any State. Any such prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against Mr. Waldholtz in accordance with this paragraph, notwithstanding the running of the statute of limitations between that date and the commencement of any such prosecutions. Mr. Waldholtz agrees to waive any and all defenses based on the statute of limitations for any prosecutions commenced pursuant to the provisions of this paragraph.

11. USE OF INFORMATION

Mr. Waldholtz understands that, except in the circumstances described in this paragraph, this Office will not use against him any statements he makes or other information he provides pursuant to this plea agreement in any civil, criminal, or administrative proceeding, other than a prosecution for perjury, giving a false statement or obstructing justice.

Mr. Waldholtz agrees that, as provided by Rule 410, Federal Rules of Evidence: (a) the government may make derivative use of and may pursue any investigative leads suggested by any information which he provides pursuant to this plea agreement; (b) in the event Mr. Waldholtz is ever a witness in any judicial

proceeding, the attorney for the government may cross-examine him concerning any statements he has made or information he has provided pursuant to this plea agreement, and evidence regarding such statements and information may also be introduced in rebuttal; and (c) in the event of breach of this Agreement as described in the preceding paragraph, any statements made or information and leads provided by Mr. Waldholtz, whether subsequent to or prior to this Agreement, may be used against him, without limitation, in any proceedings brought against Mr. Waldholtz by the United States, or in any federal, state or local prosecution. Mr. Waldholtz knowingly and voluntarily waives any rights he may have pursuant to Fed. R. Evid. 410 and Fed. R. Crim. 11(e)(6), which might otherwise prohibit the use of such information against him under the circumstances just described.

12. NO OTHER AGREEMENTS

No agreements, promises, understandings or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings or representations be made unless committed to writing and signed by Mr. Waldholtz, his counsel, and an Assistant United States Attorney for the District of Columbia.

If your client agrees to the conditions set forth in this letter, please sign the original and return it to us.

Sincerely,

ERIC H. HOLDER, JR. United States Attorney

; By:

WILLIAM E. LAWLER, III

Assistant United States Attorney

CRAIG ISCOR

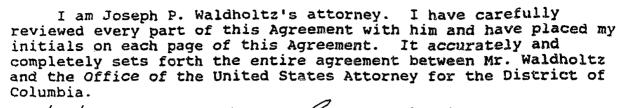
Assistant United States Attorney

I have read this Agreement, have placed my initials on each page, and carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it. No agreements, promises, understandings or representations have been made with, to or for me other than those set forth above.

6/3/96

Datte

TOSEPH P. WALDHOLTZ



UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA



UNITED STATES OF AMERICA

Criminal No. 96-0185

v.

VIOLATION:

JOSEPH P. WALDHOLTZ

18 U.S.C. § 1001 (False Statements) 2 U.S.C. §§ 437g(d) &

441a

(Failure to Report

Campaign Contributions)

26 U.S.C. § 7206(2) (Assisting in Filing

Fraudulent Tax Return)

INFORMATION

FILED

The United States informs the Court that:

4 1996 JUN

COUNT ONE

CLERK, U.S. DISTRICT COURT DISTRICT OF COLUMBIA

On or about January 31, 1995, in the District of Columbia and elsewhere, in a matter within the jurisdiction of the Federal Election Commission ("FEC"), JOSEPH P. WALDHOLTZ, as Treasurer of "Enid '94," a campaign committee supporting the election of his wife, Representative Enid Greene Waldholtz, did knowingly and willfully make and use a false writing and document, knowing the same to contain false, fictitious and fraudulent statements or entries, such writing and document consisting of the 1994 Year End Financial Report (FEC Form 3) for "Enid '94," signed by JOSEPH WALDHOLTZ and falsely and fraudulently certifying that the information contained in the report was true and accurate and that:

Enid Greene Waldholtz had contributed approximately \$1,800,000 of her personal funds to the Enid '94 campaign account

Case Related To Republic Page 188

at First Security Bank of Utah when, in fact, JOSEPH WALDHOLTZ knew that the \$1,800,000 had not come from Enid Greene Waldholtz's personal funds but, instead, had been taken from approximately \$2,800,000 that D. Forrest Greene had provided to the personal bank accounts of JOSEPH WALDHOLTZ and Enid Waldholtz during calendar year 1994; and

2. During April of 1994, certain persons residing in Pittsburgh, Pennsylvania had contributed approximately \$60,000 to Enid '94, when, in fact, those persons had made no contributions to Enid '94.

(False Statements, in violation of Title 18 United States Code §§ 1001).

COUNT TWO

The allegations in Count One are hereby realleged and incorporated by reference and it is further alleged that on or about various dates in 1994 and 1995, including January 31, 1995, in the District of Columbia and elsewhere, JOSEPH P. WALDHOLTZ, as Treasurer of "Enid '94," filed reports with the Federal Election Commission concerning Enid '94, including the 1994 Year End Report (FEC Form 3), in which he knowingly and willfully failed to report that approximately \$1,800,000 which had been placed in the personal bank accounts of Joseph and Enid Waldholtz by D. Forrest Greene had been contributed to Enid '94 during calendar year 1994, in violation of FEC contribution limits.

(Failure to Report Campaign Contributions, in violation of 2 U.S.C. §§ 437g(d) and 441a).

COUNT THREE

On or about April 14, 1993, JOSEPH WALDHOLTZ did willfully and knowingly aid, assist, counsel and advise Enid Greene Waldholtz in the preparation of her 1993 federal income tax return (IRS Form 1040), which she filed as a married person filing separately, by falsely telling her that he had given her shares of the M.L. Lee Acquisition Fund and falsely informing her of (1) the date on which he allegedly purchased the security, (2) the number of shares that he allegedly purchased, (3) the basis of the security on the date he allegedly purchased it, and (4) the basis of the security on the date that he allegedly sold the security after giving it to Enid Greene Waldholtz, knowing that such information was false and that the false information would be included on the 1993 Form 1040 filed by Enid Greene Waldholtz and would create a capital loss of approximately \$55,000, and that the false capital loss would completely offset an actual capital gain of approximately \$39,000 that Enid Greene Waldholtz

had to report on her 1993 tax return, and knowing further that the false capital loss would enable Enid Greene Waldholtz to avoid paying capital gains tax on the approximately \$39,000 in actual capital gains.

(Knowingly Assisting in Filing a False Tax Return, in violation of 26 U.S.C. § 7206(2).

ERIC H. HOLDER, JR. United States Attorney

By:

WILLIAM E. LAWLER, III
Assistant United States Attorney
D.C. Bar Number 398951
555 Fourth Street, N.W.

111

(202) 514-8203

CRAIG ISCOE

Assistant United States Attorney

D.C. Bar Number 252486 555 Fourth Street, N.W.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Cr. Nos. 96-143-01) and

UNITED STATES OF AMERICA

v.

JOSEPH P. WALDHOLTZ

96-185-01 (NHJ)

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits its memorandum in aid of sentencing defendant Joseph P. Waldholtz. In the first section of the memorandum, the government responds to defendant's objections to the Presentence Investigation Report. In the second section, the government summarizes the facts that it believes the Court should consider in sentencing Mr. Waldholtz and recommends that the Court impose a sentence at the top of the applicable guideline range.

RESPONSE TO DEFENDANT'S OBJECTIONS TO PRESENTENCE REPORT

The government responds first to the objections raised by defendant that could affect the Guidelines calculations and then to defendant's other factual challenges.

16

^{&#}x27;On Friday evening, November 1, 1996, defendant's counsel, A.J. Kramer, courteously volunteered to telefax government counsel a copy of the Sentencing Memorandum that he intended to file on Monday, November 4, making it possible for the government to file its response on November 4 as well.

A. The Court Has a Substantial Legal Basis for Finding that Defendant Should Not Receive Credit for Acceptance of Responsibility.

Page 8. ¶ 22. The government agrees with the Presentence Report that there is a legal basis for the Court to conclude that Mr. Waldholtz's conduct since he entered his guilty plea on June 5, 1996, demonstrates that he should not receive credit for acceptance of responsibility. As Mr. Waldholtz admitted at the hearing held on September 26, 1996, he committed a multitude of offenses in the three months following his plea. Among other things, Mr. Waldholtz acknowledged committing several financial crimes that were substantially similar to bank fraud, one of the crimes to which he pleaded guilty.

Mr. Waldholtz admitted that he had: (1) knowingly written almost \$39,000 in bad checks to his parents; (2) stolen a checkbook from his parents, made the check payable to himself in

²Section 9 of the Plea Agreement between the United States and Mr. Waldholtz provides "if Mr. Waldholtz completely fulfills all of his obligations under this agreement, the United States will recommend that he receive the benefit of a 3-level reduction in the sentencing guideline's offense level, based on acceptance of responsibility . . ." The Section also provides, however, that "the government reserves its right to modify its position regarding the recommendation" if it receives previously unknown information that is relevant to the recommendation.

The government submits that Mr. Waldholtz's commission of new crimes after entering his plea constitutes "previously unknown information" that entitles the government to exercise its right to modify its recommendation regarding whether defendant should receive credit for acceptance of responsibility. In addition, even if the if the government had not reserved that right, it would have retained the right to respond to defendant's arguments regarding the legal issues related to the impact of a defendant's post-plea criminal offenses on the Court's determination of whether the defendant has accepted responsibility for the offenses to which he pleaded guilty.

the amount of \$415, and then forged his father's signature to the check and cashed it; (3) knowingly written a bad check to an optical store; (4) fraudulently obtained and used several different credit cards intended for use by his father and opened accounts in his father's name without his father's knowledge or consent; (5) borrowed a credit card from a friend and then improperly used it; (6) stolen another credit card from the purse of the same friend and fraudulently used that card; and, (7) fraudulently rented an automobile and failed to return it, forcing the rental company to repossess the car. In addition to those offenses, Mr. Waldholtz also admitted that he had: (1) begun using heroin and (2) used his father's Drug Enforcement Administration number (his father is a dentist) to obtain Vicodin tablets.

Defendant contends that despite his commission of those offenses since pleading guilty, he should still receive credit for acceptance of responsibility. The case law and Sentencing Guidelines are to the contrary. First, it is undisputed that the sentencing judge has great discretion in determining whether a defendant has accepted responsibility. Application Note 5 to the Guidelines § 3E1.1(a) provides:

The sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility. For this reason, the determination of the sentencing judge is entitled to great deference on review.

An appellate court will reverse the trial court's determination only if it is "clearly erroneous" and is without foundation. See United States v. Morrison, 983 F.2d 730, 732 (6th Cir. 1993) and

United States v. Thomas, 870 F.2d 267, 270 (5th Cir. 1989).

It appears undisputed within the circuits that where, as here, the defendant engages in new criminal activity that is substantially similar to, or related to, that for which he has pleaded quilty, the sentencing court has discretion to refuse to grant a reduction for acceptance of responsibility. United States v. McDonald, 22 F.3d 139, 142-144 (7th Cir. 1994) and Morrison, supra at 733-735. The only issue that is unresolved in some circuits is whether the sentencing court may refuse to grant a reduction in instances in which the new offense is completely unrelated to the previous one. The most common circumstance in which that question is raised occurs when a defendant who has pleaded guilty to a non-drug related offense uses illegal drugs while on release pending sentencing. In McDonald, the Seventh Circuit reviewed the relevant case law on that issue and noted that,

[t]he First, Fifth and Eleventh Circuits hold that a defendant is not entitled to a reduction if he or she has used a controlled substance while on release pending sentencing. The Sixth Circuit [in Morrison] disagrees.

22 F.3d at 142, citing <u>United States v. O'Neil</u>, 936 F.2d 599 (1st Cir. 1991); <u>United States v. Watkins</u>, 911 F.2d 983 (5th Cir. 1990); and, <u>United States v. Scroggins</u>, 880 F.2d 1204 (11th Cir. 1989), <u>cert. denied</u>, 494 U.S. 1083 (1990).

The Seventh Circuit decided to follow the majority of the circuits and held that the sentencing court properly exercised its discretion when it denied credit for acceptance of responsibility to a defendant who, after pleading guilty to

aiding and abetting the counterfeiting of obligations of the United States in violation of 18 U.S.C. §§ 471 and 472, repeatedly failed to submit urine samples and tested positive for the use of marijuana. McDonald, supra at 144. Thus the Seventh Circuit joined the First, Fifth and Eleventh Circuits in holding that the sentencing court may deny credit for acceptance of responsibility to a defendant who commits any crime after pleading guilty and before being sentenced.

In the instant matter, several of Mr. Waldholtz's new offenses, all of which he has admitted, are substantially similar to one or more of the offenses to which he pleaded guilty. Writing bad checks to his parents and to an optical shop, fraudulently applying for and using credit cards in his father's name, stealing a check from his parents forging his father's signature, stealing and using a credit card belong to a friend, borrowing and improperly using a credit card, and fraudulently renting and refusing to return a rental car all constitute crimes that are substantially similar to, or related to the offense of bank fraud to which Joseph Waldholtz pleaded guilty on June 5, 1996.

Under the law of every circuit that has considered the issue, therefore, a sentencing judge would have complete discretion to deny Waldholtz credit for acceptance of responsibility because he committed new crimes that were of the same nature as one of the offenses for which he pleaded guilty. In addition, by using heroin and Vicodin, and fraudulently

obtaining Vicodin from a pharmacy, Mr. Waldholtz has engaged in new crimes that are different from the ones to which he pleaded guilty but which, under the rationale followed by the First, Fifth, Seventh and Eleventh Circuits, also demonstrate his failure to accept responsibility. The Court, therefore, has a strong basis for finding that Mr. Waldholtz has not accepted responsibility within the meaning of the Sentencing Guidelines.

B. The False Statements and Filing a False Report Involved More Than Minimal Planning and a Two Level Increase is Warranted.

page 9, ¶ 33. Defendant's contention that the offenses of making false statements (18 U.S.C. § 1001) and filing a false Federal Election Commission report (2 U.S.C. §§ 437g(d)(1)(A)) and 441) involved only minimal planning ignores the facts. Mr. Waldholtz, sometimes with the assistance of Enid Greene, obtained 26 different advances of cash totalling approximately \$4.1 million, from Enid Greene's father, Dunford Forrest Greene, during 1994 and 1995, which Mr. Waldholtz deposited into accounts in his name or joint accounts that he held with his wife. Mr. Waldholtz, over a period of many months, contributed about \$1.8 million of that amount directly to Enid Greene's 1994 Congressional campaign.³

Contrary to defendant's assertion, he did not make a single,

³Enid Greene has publicly contended that she was unaware that Waldholtz was contributing funds that could be considered loans or gifts from her father or otherwise violating FEC regulations. On October 31, 1996, the government announced that it had declined prosecution of Rep. Greene for all matters related to her 1992 and 1994 Congressional campaigns and her 1993 federal tax return.

lump sum contribution of \$1.8 million. Instead, he made more than 20 separate transfers of funds from the Waldholtz/Greene accounts to Greene's 1994 campaign committee, which was in the name "Enid '94," and failed to report the source of those funds accurately to the FEC. In addition, Mr. Waldholtz made several cash contributions to the campaign with funds provided by Mr. Greene and failed to report those contributions.

Moreover, Mr. Waldholtz's improper reporting of the contributions was not limited to the 1994 Year End Report. That Report not only contained concealment and misreporting of new contributions, it also repeated and incorporated reporting violations that Mr. Waldholtz had made in the Enid '94 (1) Twelfth Day Report preceding General Election and (2) Thirtieth Day Report following General Election. Thus, the Year End Report included and repeated misrepresentations and false statements that Mr. Waldholtz had made in two previous reports that he signed and filed with the FEC.

In addition, Mr. Waldholtz filed at least six other FEC reports for 1994 that contained false information. Those reports

^{&#}x27;On March 8, 1996, Rep. Greene filed a lengthy complaint with the FEC alleging that Mr. Waldholtz is quilty of 858 violations of the Federal Election Campaign Act based on his actions regarding her 1992, 1994 and 1996 campaign committees. Even if that total is substantially inflated by considering a single action to constitute as many as five violations, the complaint does document in great detail the evidence against Mr. Waldholtz for civil The great majority of those alleged violations stem infractions. from Mr. Waldholtz's actions during the 1994 campaign, to which he has pleaded guilty. Regardless of the precise total of Mr. Waldholtz's FEC infractions, it is clear from the sheer number and magnitude of the offenses that they involved more than minimal planning.

include the Enid '94 (1) April 15 Quarterly Report, (2) Twelfth Day Report preceding Utah Republican Convention, (3) July 15 Quarterly Report, (4) Amendment to July 15 Quarterly Report, (5) October 15 Quarterly Report, and (6) Amendment to October 15 Quarterly Report. Mr. Waldholtz had to design and coordinate carefully his false reporting to the FEC and there can be no doubt that he engaged in more than minimal planning.

C. Mr. Waldholtz's Actions Affected the Outcome of the 1994 Congressional Election.

Page 19. ¶ 103. Although it is always impossible to state with absolute certainty whether particular actions changed the outcome of an election, it is widely accepted within the Second Congressional District of Utah that the substantial illegal and unreported contributions that Joseph Waldholtz made to Enid Greene's campaign with her father's money enabled Rep. Greene to win the election. Rep. Greene has acknowledged as much herself. During a five hour news conference that she held after it was revealed that her father's money had financed her campaign, Rep. Greene stated, "ftlhere's no way to return an election. I wish there were." Salt Lake City Tribune, Dec. 17, 1995 at p. A-1 (emphasis added). She also publicly apologized to her 1994 opponents, Democrat Karen Shepherd and Independent Merrill Cook, for using tainted money and to her constituents for "creating a circus" in the campaign. Salt Lake City Tribune, Dec. 12, 1995 at p. A-1. She added, "[y]ou can't give an election back." Id. Mr. Waldholtz has also admitted to the Probation Officer that his actions enabled his then-wife to win the

election.

Perhaps not surprisingly, the candidates that Rep. Greene defeated in 1994 agree with her that the illegal contributions caused Greene to win the election. Speaking for Shepherd and the Utah Democratic Party, party executive Todd Taylor stated,

I'm not saying her [Enid Greene's] message didn't have something to do with it, but I firmly believe that it was a stolen election. To go from last place to first place in a month had to be a function of money.

Salt Lake City <u>Tribune</u>, Dec. 17, 1995 at p. A-1. According to the <u>Tribune</u>, Independent candidate Merrill Cook claims that he would have beaten Greene and Shepherd "had it not been for Enid's last minute infusion of cash." Salt Lake City <u>Tribune</u>, March 14, 1996 at p. B-1.

The campaign spending by Enid '94 was a key issue before the November 1994 general election, with many questioning where the campaign was getting its money. During the campaign, Greene stated she and Joseph Waldholtz had been forced by the Shepherd and Cook campaigns to make a "considerable personal investment" in the campaign." Salt Lake City Tribune. October 18, 1994 at p. A-1. Responding to inquires regarding the source of contributions to Enid '94, one of Greene's campaign representatives stated, "[i]t's family money. It's Joe and Enid's. End of story." Id. Cook, who himself is wealthy and spent nearly \$600,000 of his own money on the 1994 campaign stated shortly before the 1994 election, "I'm honest enough to say Enid has out-Merrill Cooked Merrill Cook -- by a mile." Lake City Tribune, October 18, 1996 at p. A-1. Cook added that

although he had earned his money, Greene's had come from a merger of marriage. <u>Id</u>. Had the true source of the illegal campaign contributions been revealed before the election, the outcome of the election might have been different.

Voter polls conducted at various times before the 1994 election confirm that Greene's support began to increase at the same time that her campaign began purchasing large amounts of television advertisements. In early October of 1994, a Salt Lake City Tribune poll found that 36% of the voters planned to vote for Shepherd with Waldholtz (Greene) and Cook each drawing 26% of the vote. Salt Lake City Tribune, October 22, 1994 at p. B-1. The poll also found that Waldholtz had gained 8 points since the previous poll. Id.

On the Sunday before the Tuesday election, the <u>Tribune</u> reported,

Propelled by an advertising avalanche made possible by some \$2 million of mostly personal money, Republican Enid Greene Waldholtz broke her ideological logjam with Independent Merrill Cook and is in a political death grip with Democrat Karen Shepherd, a survey for The Salt Lake City <u>Tribune</u> of 1,436 likely voters for the 2nd Congressional District indicates.

The final week canvass of the district by Valley Research, The <u>Tribune's</u> independent pollster, showed Waldholtz and incumbent Shepherd dead even at 32 percent as of Saturday afternoon . . . Cook is left in third place with 21 percent of the straw vote . . .

Shepherd had enjoyed a lead of 8 to 10 points until mid-October, according to earlier Tribune polls. Waldholtz's money began to talk via voluminous 30- and 60- second sound bites in the latter days of the race, however, and portions of Cook's followers and would-be supporters from the undecided column, most of whom have

Republican leanings, appear to have listened. Cook had 27 percent of the respondents in an Oct. 1 poll, for instance. Whatever the size of Cook's defections, Waldholtz is the beneficiary on a 2-to-1 basis over Shepherd, said Sally Christensen, manager of Valley Research of Salt Lake City.

Salt Lake City Tribune, October 22, 1994, at p. B-1.

Greene ultimately won the 1994 election with 46 percent of the vote. Shepherd received 36 percent and Cook garnered 18 percent of the vote total. Congressional Quarterly's Politics in America -- 1996, Congressional Quarterly Publications (1995), p. 1339. Greene received 18,596 more votes than Shepherd in 1994.

Id. In 1992, Shepherd received 51 percent of the vote, Greene received 47 percent and an independent candidate got two percent. Congressional Quarterly's Politics in America -- 1994, Congressional Quarterly Publications (1993), p. 1549. In 1992, Shepherd received 9,431 more votes than Greene. Id.

D. Other Factual Issues

1. Whether Waldholtz's Daughter is his Dependent

Page 2. The government does not dispute Mr. Waldholtz's statement that he considers his daughter, Elizabeth, to be his dependent, but does not know whether she is a "dependent" as that term is defined by the Probation Office.

2. Dates of Marriage and Rouse Purchase

Page 4, ¶ 6. The government agrees that Mr. Waldholtz and Rep. Greene were married on August 7, 1993 and that they purchased their home on South Benecia Drive in Salt Lake City, Utah, before they were married.

Page 4. ¶ 7. Mr. Waldholtz pleaded guilty to Assisting in Filing a Fraudulent Tax Return, in violation of 26 U.S.C. § 7206(2), for providing Enid Greene false information that she used on her 1993 federal tax return. Under that section, it is not necessary for the government to establish whether the person who filed the return (Rep. Greene) knew that the information was false, as long as the person who provided the false information (Mr. Waldholtz) knew that it would be used in the return. Whether or not Rep. Greene knew that the information was false, therefore, Mr. Waldholtz is equally culpable. In this regard, it should be noted that the government has declined criminal prosecution of Rep. Greene for her actions regarding the 1993 tax return.

Accordingly, it is not necessary for the Court to make a determination on Rep. Greene's level of awareness. Consistent with Fed. R. Crim. P. 32(c)(1), the Court may simply make a determination that no finding on Rep. Greene's culpability is necessary because it will not take Rep. Greene's actions regarding the 1993 return into account when it sentences Mr. Waldholtz and that her actions will not affect the sentence.

4. Who Made Decision that Greene Would Run in 1994

Page 7. ¶ 18. The government takes no position on how the decision that Enid Green would run for Congress in 1994 was made. Again, consistent with Fed. R. Crim. P. 32(c)(1), the Court may make a determination that no finding on this matter is

required because the Court will not take the matter into account when it sentences Mr. Waldholtz and that the disputed matter will not affect the sentence.

- 5. FEC Reports Filed Before Waldholtz Moved to Utah

 Page 10, ¶ 54. The government agrees that FEC reports

 for Enid Greene's 1992 campaign that were filed before Joseph

 Waldholtz moved to Utah contained errors and that Waldholtz filed

 erroneous reports for the 1992 campaign after he moved to the

 state. The government takes no position on whether the false

 reports were filed with Greene's "full knowledge and

 acquiescence." Again, consistent with Fed. R. Crim. P. 32(C)(1),

 the Court may make a determination that no finding on this matter

 is required.
 - 6. Rep. Greene Did Not Withhold Documents Waldholtz Needed to File an Accounting of His Grandmother's Estate.

Page 13. ¶ 65. The government disputes
Waldholtz's contention that he did not file an accounting of the
estate of his grandmother, Rebecca Levenson, because Ms. Greene's
attorneys had the requested documents and would not return them.
Waldholtz made a similar claim regarding the government, and
neither has merit. After Judge Kelly held Waldholtz in contempt
in Pittsburgh, Waldholtz's attorney telephoned undersigned
government counsel and told him that Waldholtz had told the
attorney that the government had all the documents related to the
Levenson estate.

Government counsel informed the attorney, and now informs the Court, that the government has never had any documents related to the estate of Rebecca Levenson. In addition, the government informs the Court that Enid Greene's attorneys have provided the government with full access to documents within Greene's possession and control and the government has no reason to believe that Greene's counsel withheld any documents from it. The government has carefully reviewed those documents and has not found any that relate to the Levenson estate.

7. Additional Personal Issues

Page 14. ¶ 66. The government takes no position on whether Mr. Waldholtz loved, or continues to love, his former wife. The government agrees with defense counsel that Rep. Greene receives financial assistance from her parents and notes that until January of 1996, she will continue to receive her Congressional salary. The government agrees with defense counsel that Rep. Greene was the one who decided to sell her home on South Benecia Drive. The government further agrees that Forrest Greene has sued Waldholtz for \$ 4.1 million and informs the Court that Mr. Greene received a default judgment against Waldholtz. The government has seen no evidence, however, that Waldholtz has the assets needed to pay the judgment.

The government submits that, as discussed above, the Court need not resolve any of the issues raised by defendant regarding this paragraph and, consistent with Fed. R. Crim. P. 32(c)(1), the Court may make a determination that no finding on these

matters is required.

a. The Government takes No Position on an Upward Departure Based on Waldholtz's Conduct While on Release.

page 18. ¶ 102. The government takes no position on whether an upward departure is warranted because of Mr. Waldholtz's conduct on release. The government also notes that in the final sentence of Section 8 of the plea agreement it stated that it would not seek an upward departure. There is a strong argument that the United States is no longer bound by that sentence because Section 10 of the Plea Agreement provides that the government may consider the agreement to be breached if the defendant commits new crimes after pleading guilty and before being sentenced. The United States will, however, continue to act as if it is bound by the Plea Agreement and is not requesting an upward departure.

The government has informed defendant's counsel, A. J.

Kramer, of its position. Based on conversations with Mr. Kramer, undersigned counsel believes that both sides recognize that the Court may sua sponte determine that an upward departure is warranted. The Court announced that it was considering an upward departure in its letter to counsel of October 22, 1996.

II. The Court Should Sentence Joseph Waldholtz to the Maximum Term Permissible Under the Applicable Guideline Range

A. Introduction

Through his actions, Joseph Waldholtz has done more than commit three serious felonies and one misdemeanor, although that

is bad enough. As discussed above, by his illegal acts, Mr. Waldholtz stole a federal election. Mr. Waldholtz defrauded the residents of Utah's Second Congressional District and, by extension, all the citizens of the United States who are affected by the House of Representatives. The Court should sentence Mr. Waldholtz to the maximum term permitted within the applicable Guideline range.

The Presentence Report concludes that Mr. Waldholtz is at an offense level of 18, which means that the Court may sentence him to incarceration for 27 to 33 months. The government urges the Court to impose a sentence of 33 months if it determines that the Guideline range is appropriate. As discussed above, the government submits that the offense level of 18 was correctly calculated. If the Court should determine that the offense level should be reduced, however, then it should sentence the defendant to the maximum amount permitted under the new Guideline range. If the Court should grant an upward departure, the government has no recommendation on the appropriate sentence within the new Guideline range.

B. Defendant Has Demonstrated a Contempt for the Law

Joseph Waldholtz is a con artist whose continued pattern of fraud and deceit has assumed pathological dimensions. The Court is aware of the facts behind the four crimes to which Mr. Waldholtz pleaded guilty, which are accurately set forth in the

⁵For the purposes of sentencing defendant Waldholtz it is immaterial whether the beneficiary of his actions, Enid Greene, was completely unaware of his actions or a knowing participant.

Presentence Report and Plea Agreement, and the government will not elaborate them further. Those facts, however, do not fully convey Mr. Waldholtz's persistent unwillingness -- or inability -- to tell the complete truth or to conform his conduct to the law. By committing so many additional offenses after pleading guilty, and by trying to avoid coming to Court for his revocation hearing, the defendant has demonstrated that he does not take either the judicial system or the criminal laws seriously.

The United States entered into a plea agreement with Mr. Waldholtz because it believed that the agreement, which required defendant to plead guilty to felonies in three different substantive areas and to a misdemeanor, represented a fair disposition of the charges against him. Had the government taken the case to trial, and had the jury convicted Waldholtz of ail counts in the indictment, Waldholtz would faced a prison sentence that was less than a year longer than the one he faced upon entering the plea agreement. The plea agreement did not provide Waldholtz with any special treatment but, instead, was similar to the plea agreements that the United States routinely enters with defendants who choose to plead guilty and avoid trial.

In addition, although the plea agreement provided that if Waldholtz substantially assisted in the government's investigation, the United States Attorney could recommend that he receive a downward departure pursuant to Guidelines Section 5K1.1, the government informed defense counsel that, barring some unanticipated information from Mr. Waldholtz, it was not likely

that the government would recommend a downward departure. The government was never under the illusion that Mr. Waldholtz could be trusted completely and never relied on any information that he provided unless it could be corroborated by independent evidence. The government did expect, however, that Mr. Waldholtz would show sufficient respect for the legal system, and for his own wellbeing, that he would refrain from committing new crimes during the three and half months between his guilty plea and his sentencing.

Government counsel were surprised that Mr. Waldholtz committed so many new offenses during a time when he should have been on his best behavior. Those actions demonstrate his utter disregard for the law and his belief that he can manipulate any person or entity to his own benefit. Mr. Waldholtz evidently also believes that he can cheat and manipulate his family and friends with impunity because they will not bring charges against him. Even though Mr. Waldholtz's efforts at manipulation are often almost completely transparent, the persistence of the efforts demonstrates a complete lack of remorse and further affirms the need to sentence him to the maximum term under the applicable Guideline range.

- C. The Court Should Not Recommend Defendant for Placement in an Intensive Confinement Center ("ICC").
 - 1. Overview of ICC Program

Intensive Confinement Centers are an outgrowth of the "Shock Incarceration Program", 18 U.S.C. § 4046, which was enacted by Congress in 1990 following extensive hearings and

discussions of state "boot camp" programs. The statute provides:

The Bureau of Prisons may place in a shock incarceration program any person who is sentenced to a term of imprisonment of more than 12, but not more than 30, months, if such person consents to that placement.

18 U.S.C. § 4046(a). The statute defines the shock incarceration program as a "a highly regimented schedule" of "strict discipline, physical training, hard labor, drill, and ceremony characteristic of military basic training," combined with "appropriate job training, and educational programs (including literacy programs) and drug, alcohol, and other counseling programs." (18 U.S.C. § 4046(b)(1) and (2)).

An inmate who completes the program,

shall remain in the custody of the Bureau [of Prisons] for such period (not to exceed the remainder of the prison term otherwise required by law to be served by that inmate) and under such conditions, as the Bureau deems appropriate.

18 U.S.C. § 4046(c). In practice, the Bureau has interpreted this subsection to give it authority to release inmates from custody before the expiration of their sentences and to place them in half-way houses or home confinement earlier than Bureau regulations otherwise permit. See Bureau of Prisons, Operations Memorandum 249-93.

2. An inmate in the ICC program may be released into the community a year and half earlier than normal and have his sentence reduced without additional input from the Court.

For an inmate, therefore, entry into an ICC has substantial benefits. An inmate who complete six months of "boot camp" at an ICC is immediately eligible to be placed in a half-way house and

may soon have his sentence reduced by the Bureau of Prisons without any additional input from the Court. Ordinarily, inmates are not eligible to enter a half-way house until they have served all but six months of their sentence. An inmate who enters an ICC immediately after being sentenced to 30 months of incarceration, for example, may be released to a half-way house six months later, with 24 months still remaining on his sentence. Such an inmate would enter the half-way house at least 18 months earlier than he would have had he not been placed in an ICC.

Moreover, the Bureau of Prisons has complete discretion to release the inmate from its custody entirely. If it does so, then the Bureau of Prisons is effectively reducing the inmate's sentence without any further input from the Court. The government submits that Mr. Waldholtz should not be given an opportunity to manipulate the Bureau of Prisons in that manner.

3. The ICC Program is Not Intended For 33 Year Old, College-Educated White Coller Criminals With Serious Psychological Problems.

At the Congressional hearings on the shock incarceration program, there was testimony that "most [state shock incarceration programs] are limited to persons under a certain age, no older than early twenties, in order to have young, impressionable inmates in the program." House of Representatives, Hearings before the Subcommittee on Crime of the Committee on the Judiciary; 101st Congress, Second Sess., Serial No. 149, March 21 and 29, May 24, 1990, p. 178 (emphasis

added).⁶ Certainly, the state programs after which the federal program was modeled are not intended for persons like Mr. Waldholtz who are neither in their early twenties nor impressionable.

Although there is some reason to believe that Mr. Waldholtz would benefit from a program of strict discipline and regimentation, the ICC program is not intended for persons like the defendant. Mr. Waldholtz has a college education and does not need literacy or educational training. In addition, although Mr. Waldholtz has used illegal drugs, drug usage is not a major cause of his criminal activity. Moreover, the ICC program would not provide Mr. Waldholtz with the mental health treatment that he so clearly appears to need. The psychological assessments submitted by Mr. Waldholtz's counsel do not excuse his actions or support mitigation of his sentence, but they do indicate that Mr. Waldholtz needs a more personalized and psychologically based treatment regimen than the ICC program provides.

The government recommends against permitting Mr. Waldholtz to enter the ICC program because it would substantially reduce

⁶Congress carefully examined state shock incarceration programs and considered testimony by many state prison officials, experts in behavior and correctional institution and other before enacting 18 U.S.C. § 4046. See Hearings cited above and Federal Role in Promoting and Using Special Incarceration, Hearings before the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs. Senate Hearing 101-722. United States Senate, 101st Congress, Second Sess. January 29 and March 1, 1990 ("Senate Hearings"); and Sentencing Option Act of 1989, Hearing before the Subcommittee on Criminal Justice of Judiciary. United States House of Committee on the Representatives. 101st Congress, First Sess. Serial No. 27. September 14, 1989.

the length of his sentence. Mr. Waldholtz does not fit the profile of persons who would benefit from the program. If Mr. Waldholtz were admitted into the ICC program, he would use the program to avoid confronting his underlying psychological problems and, once again, manipulate the system -- this time to get out of prison early.

III. CONCLUSION

The Court should sentence defendant Waldholtz to the maximum sentence permitted under the applicable Guideline range and should not recommend him for placement in an Intensive Confinement Center.

Respectfully submitted,

ERIC H. HOLDER, JR. United States Attorney

By:

CRAIG ISCOR

Assistant United States Attorney

D.C. Bar Number 252486

555 Fourth Street, N.W., Room 5100

Washington, DC 20001

(202) 514-8316

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by tele-facsimile and first class mail, postage prepaid mail to counsel for Joseph Waldholtz, A. J. Kramer; Federal Public Defender, 625 Indiana Avenue, N.W.; Suite 550; Washington, D.C., 20004, this fourth day of November, 1996.

Craig Iscoe

Assistant U.S. Attorney D.C. Bar Number 252486

555 Fourth Street, N.W., Room 5100

Washington, DC 20001

(202) 514-8316

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA.

Plaintiff.

v.

JOSEPH WALDHOLTZ.

Defendant.

Criminal Action No. 96-143 and

96-185 (NHJ)

Floor

9994 - 7 1995

SENTENCING MEMORANDUM

The Court has received the written objections of defendant to the Presentence Report and the government's response. Having afforded counsel an opportunity for argument at a hearing held on November 7, 1996, the Court has determined that certain controverted matters are not relevant to its determination and thus will not be taken into account in, and will not affect, sentencing. See Fed. R. Crim. P. 32(c)(1) (1996). In making its sentencing decision, the Court has not considered the following matters that appear to be disputed: (1) whether Enid Greene (hereinafter "Greene") insisted on running for election in 1994; (2) whether false Federal Election Commission reports were filed with Greene's knowledge or consent; (3) whether defendant's failure to supply a Pennsylvania court with documents relating to his grandmother's estate was caused by Greene's withholding of the documents; (4) whether defendant depleted his grandmother's estate before or after his marriage to Greene; (5) whether Greene currently receives financial assistance from her parents; and (6) whether defendant once loved or continues to love Greene.

At the November 7, 1996, hearing, the parties agreed that three amendments should be

20

made to the Presentence Report. Accordingly, Page 5, ¶ 7, line 2, shall read: Representative Greene stated that he falsely informed her that he had some securities, M.L. Lee Acquisition, in which he lost a considerable amount of money. Page 14, ¶ 66, line 1, shall be changed from August 2, 1993, to August 7, 1993. Page 14, ¶ 66, line 18, shall read: Because of him, she asserts she is broke, ruined, and a single parent.

The Court finds that defendant's continuing criminal conduct after his guilty pleas is incompatible with acceptance of responsibility. See U.S. SENTENCING GUIDELINES MANUAL § 3E1.1, comment, n.3 (1995); United States v. McDonald, 22 F.3d 139, 144 (7th Cir. 1994); United States v. O'Neil, 936 F.2d 599, 600 (1st Cir. 1991); United States v. Cooper, 912 F.2d 344, 346 (9th Cir. 1990); United States v. Wivell, 893 F.2d 156, 159 (8th Cir. 1990); United States v. Scroggins, 880 F.2d 1204, 1216 (11th Cir. 1989). Many of these offenses, including uttering, misappropriation of checks, and fraudulent use of a credit card, are similar to the bank fraud to which he pleaded guilty. See United States v. Morrison, 983 F.2d 730, 734 (6th Cir. 1993). By continuing to engage in criminal acts of the same nature as one of the offenses to which he pleaded guilty, defendant has demonstrated that he does not accept responsibility for the crimes in this case. The Court finds that a reduction in the offense level for acceptance of responsibility is not warranted.

The Court finds that defendant's conduct with respect to Counts I and II of the criminal information filed in criminal action 96-185 required more than minimal planning. Defendant obtained more than 26 different advances, totaling \$4.1 million, from Greene's father. He deposited these funds into one of two bank accounts: an account held in his name or a joint account held with his wife. He subsequently made 20 transfers, totaling \$1.8 million, over a

period of months to Greene's 1994 campaign committee. Defendant failed to report these and other campaign contributions in the Enid '94 Twelfth Day Report preceding the election and the Thirtieth Day Report following the general election. He subsequently incorporated the omissions and false statements in these two reports into the Year End Report. The sophistication of defendant's scheme, combined with his repeated acts over a period of time, demonstrates careful planning and execution. See U.S. SENTENCING GUIDELINES MANUAL § 1B1.1, comment, n.1(f) (1995). The Court finds that a two level enhancement for more than minimal planning is warranted. See U.S. SENTENCING GUIDELINES MANUAL § 2F1.1(b)(2)(A) (1995).

In addition, the Court has determined that the total offense level should be adjusted upward to account for defendant's continuing criminal activity while on release. Under 18 U.S.C. § 3553(b), a sentencing court may impose a sentence outside the applicable guideline range if "there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission." 18 U.S.C. § 3553(b) (1994); U.S. SENTENCING GUIDELINES MANUAL § 5K2.0 (1995). Such aggravating circumstances are present here.

The Court of Appeals for this Circuit has held that post-offense misconduct is a proper basis for an upward departure in offense level if it shows extensive criminal involvement. U.S. v. Fadavini, 28 F.3d 1236, 1242 (D.C. Cir. 1994). Defendant admitted at a September 26, 1996, hearing that he had committed numerous offenses during the four month period of his release pending sentencing. Among other things, defendant forged a prescription, misappropriated checks from his father, wrote an unauthorized check for \$415 on his father's account, wrote more than \$18,000 in checks for which there were insufficient funds, misappropriated a credit card

from his father, misappropriated a credit card from a friend, and made unauthorized purchases with the two misappropriated credit cards. In other words, after his release, defendant perpetrated fraud upon his family and friends and continued his practice of writing checks for which there were no funds on deposit. Although this case does not fit squarely into the enhanced penalty provided for under Section 2J1.7 for commission and conviction of a federal crime while on release, the underlying purpose of that section applies here: the imposition of an enhanced penalty for criminal conduct while on release. See U.S. SENTENCING GUIDELINES MANUAL § 2J1.7 (1995). Because defendant's post-release conduct is not adequately taken into consideration by the Sentencing Commission, the Court will impose a three offense level upward departure. See U.S. v. Fadayini, 28 F.3d at 1242 (finding that a three level departure was reasonable because it was the same level of departure recommended by § 2J1.7).

NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

Dated: Movember 7,1996

Tribune Archive 1997

FEC STARTS GREENE PROBE; GREEN ... 10/01/97

Salt Lake Tribune

Types: »Utah«

Published: >10/01/97*

Page: »B14

Keywords: UT Congressional Delegation, Political Scandals

FEC Starts Greene Probe; Greene: FEC Begins Investigation

Byline: BY DAN HARRIE THE SALT LAKE TRIBUNE

Copyright 1997, THE SALT LAKE TRIBUNE

The Federal Election Commission has launched an investigation into Enid Greene's 1994 congressional campaign, and the admitted \$1.8 million illegally funneled into her victorious election.

Three former campaign aides to the one-term Republican congresswoman from Salt Lake City confirmed to The Salt Lake Tribune that they have been interviewed by FEC investigators.

Greene, who recently moved back to Salt Lake City from Washington, D.C., said Tuesday she was aware of the probe -- and welcomed it.

"I'm talking with the FEC. We talk with them whenever they make a request," she said. "I'd like to get this resolved once and for all."

Unlike the previous FBI and Justice Department probe into the tangled cash and political intrigue of Greene and her ex-husband, Joe Waldholtz, the FEC investigation carries no threat of criminal prosecution. That earlier case ended in Waldholtz going to to prison for bank, election and tax fraud. Greene was cleared of crimes.

But millions of dollars in fines could be at stake in the FEC case.

"Knowing and willful" campaign-finance violations carry civil penalties up to double the amount involved -- in this case \$1.8 million.

The source of the cash illegally poured into Greene's victorious 1994 election was the candidate's father -- retired stock broker D. Forrest Greene. A relative, like any other individual, is allowed to contribute a maximum of \$3,000 per election cycle.

Throughout the 1994 campaign and for most of 1995, Greene maintained the money legally went into the campaign from the sale of a money-market account that belonged to her. A candidate is allowed to spend unlimited amounts of personal wealth on elections.

Finally, in a marathon five-hour December 1995 tell-all news conference, she acknowledged the money came from her father. And she claimed Joe -- posing as a millionaire whose funds were temporarily tied up -- tricked her father into loaning him \$4 million. About half of that went into the campaign.

FEC spokesman Ian Stirton said he could neither confirm nor deny the long-awaited probe because of confidentiality restrictions.

But representatives from the FEC's office of general counsel recently have contacted at least three former campaign workers in connection with the ongoing probe.

Former Greene campaign manager and one-time congressional aide David Harmer said he was interviewed for about four hours on consecutive days just two weeks ago.

Another ex-campaign manager, Kaylin Loveland, was questioned about a month ago, and former Greene political consultant Peter Valcarce was interviewed in mid-August.

None of the three would talk about specific issues covered, citing confidentiality provisions. They did say the interviews were wide-ranging, and that many questions covered familiar territory, reminiscent of the earlier Justice Department case, which included an intensive grand jury investigation.

Greene pointed out the FEC investigation may be connected to the complaint she filed in March 1996 accusing former husband and one-time campaign treasurer Waldholtz of 858 violations of election law.

Stirton confirmed that complaint still is open. But he refused to comment on whether the FEC has initiated its own probe to look at a wider cast of potential wrongdoers, including Greene or her father.

However, there are indications the investigation is a new one and not limited to allegations and

issues raised in Greene's complaint.

Loveland said she had been questioned in connection with that matter much earlier. She said she felt free to talk about that because she was listed as a party, along with Waldholtz.

But Loveland declined to discuss the more recent interview session -- except to confirm that it occurred.

"It was just an interview with the FEC and I can't really tell you what the subject of it was," she said, adding she was following the instructions of agency officials.

Greene said she did not know how the investigation is "structured" and whether it includes or is

separate from the complaint she filed in early 1996.

The only thing certain, she added, was that "they're looking at the 1994 campaign."

Greene also ran for Congress in 1992, but narrowly lost to Democrat Karen Shepherd, who Greene then returned to defeat two years later. There have been questions about the financing of that campaign because Greene used proceeds from the sale of a house to her parents, although county records indicate the transaction was not finalized until after the election.

The former congresswoman, who is exploring `a variety" of employment options in Utah, said she is confident the current probe will end as did the first one -- laying all culpability at the feet of Waldholtz.

"The Justice Department after a year's extensive investigation discovered it all went back to Joe. I'm sure the FEC will find the same thing," Greene said.

She said there ``shouldn't be any risk" of fines against her or her father.

"There have been cases where there have been rogue treasurers who have used the campaigns for their own purposes and in each of those instances, the treasurer has been fined but the candidate and the campaign have not been," she said.

Waldholtz already faces a \$4 million civil judgment in 3rd District Court for lying to D. Forrest Greene to obtain loans from him. Waldholtz, who remains in federal prison and is purportedly broke, has paid just \$20,000 against that year-old debt.

Greene said her ex-husband's ability to pay any judgment or FEC fines is beside the point. "What he did needs to be acknowledged," she said.



Œ,



Stephen R. Cochell Cred Decelopy Deces

Cerol A. Stewart Kete A. Teoracy

Chartes A. Gruber

Merk Y. Hireto



Office of Attorney Discipline 645 South 200 East, Suite 205 • Salt Lake City, Utah 84111-3834 Telephone: (801) 531-9110 • FAX: (801) 531-9912 • WATS: 1-800-698-9077 E-mail: oad@utahbar.org

October 8, 1997

Enid Greene 1456 Penrose Drive Salt Lake City, UT 84103

Notice of Investigation

Dear Ms. Greene:

This letter is intended to serve as notice that this office has opened a file concerning the Federal Election Commission's investigation of your 1994 congressional campaign. At such time as the FEC makes a finding in this matter, the Bar may activate its own investigation, and in that event, a formal statement will be requested of you. No formal statement is required pending the conclusion of the FEC's investigation.

Please call me if you have any questions about this matter.

Sincerely,

Kate A. Toomen

Kate A. Toomey **Assistant Disciplinary Counsel**

KAT/sak



Descriptive Name: fg.let

Descriptive Type:

Creation Date:

2:27:42 PM

Revision Date:

4/28/94 3:20PM

Author:

Typist:

Subject:

Account:

Keywords:

Abstract:

Mr. D. Forrest Greene
D. F. Greene and Company
235 Montgomery Street
San Francisco, CA 94104

Dear Mr. Greene:

Please excuse this typed note, but I fear if I hand wrote it, it would be illegible! I wanted to give you an update on what is going on with the financial matters we have been dealing with. I have not discussed all of this with Enid because I don't want to upset her anymore than she has to be. The days have been very hard on her - they are so long and the people are demanding, as always. There is good news, though! Things are going very well for the campaign. Enid will clear convention and become the Republican nominee on May 7th.

There are several large problems that I have been dealing with. Things with my mother have not been well at all. She has ransacked other accounts that I didn't know she had access to. She has put me in a very precarious financial situation again. While you have heard it before, I have taken the necessary steps to remove myself from this situation. We are going to get a guardian and I will be relieved of day to day responsibility.

She has overdrawn two accounts in Pittsburgh that I transfer money through. The total is about \$114,000. What an incredible sum. The problem is this - it involves Utah Banks now because that is where we transfer the money to. While they have tried to be understanding, we are out of time. In fact, because of the American Express fiasco, I think they are very nervous and would consider legal action if I can't resolve this.

Mr. Greene, I have never felt like a bigger failure in my life. I have tried, as a good son should, to help my mother. Her life hasn't been easy - this illness isn't her fault. It has been my duty to deal with this, and ordinarily this wouldn't be a problem. As you know, my family is in an uproar. My grandmother is failing, and there is going to be legal action over her will. I cannot stop that. But, I cannot access those funds, either.

I have tried to get a loan, but it cannot be done in time. I don't feel that I can ask you to help again, but I really don't know where else to turn. I have never been at a lower point in my life. Enid has all that she can deal with - her job is so hard. I haven't talked with Mrs. Greene because she hasn't felt well, and she is dealing with her own problems, and I know she is very concerned about her health.

If you are wondering why can't I access the money that was to be returned to you, it is because she accessed it and spent it on jewelry and the house. The items cannot be returned, and even if they could, their value is much less than she spent on them. She was really taken advantage of. But that's another matter.

Mr. Greene, I would pay you any interest rate, sign any legal document, give you a mertgage on our home, or whatever you waned, if you could help us. I say us, because this will

bring her campaign and all of her dreams down. I fell as if I am ruining her life, and her chances for success. I realize what I am asking, yet I have tried for weeks to come up with alternatives. I have none. The loan will not make it in time.

If you can help, I would like to sign a legal document detailing the interest rate, terms of repayment, etc.

Mr. Greene, I am so afraid of scandal, I am just a wreck. I think we need to keep this between us. I cannot cause more pain for Enid or Mrs. Greene. She has been so kind to us; our relationship is really such a positive force in my life.

No matter what your decision, please know how much I appreciate your advice, your concern, and your love.



Descriptive Name: help.mem

Descriptive Type:

Creation Date:

2:29:21 PM

Revision Date:

8/24/94 12:58PM

Author:

Typist:

Subject:

Account:

Keywords:

Abstract:

Mr. and Mrs. D. Forrest Greene 1456 Penrose Drive Salt Lake City, UT 84103

Dear Mr. and Mrs. Greene:

I have spent the past four hours on the phone with Pittsburgh, the attorneys. First Security, and other investigators. I made Enid a promise that I would never "give up" or say that I should leave her for her own good. That was my anniversary present to her. Yet, once again, because of my failure as a husband, son, son-in-law, and I guess even a person, we are in a horrible position.

The money was transferred to us and ready for wire. Do you remember two weeks ago when First Security had to take money out of my account because I deposited a check of my mother's and she signed a statement that she never received it? (Which was not true: I wired her \$500 per week out of that check — so she didn't spend it all at once!) Well, it appears that all of the checks that I have deposited she has done this with. We re-invested 4 large CDS for her through this account, and in banks back in Pittsburgh. Part of the money was used to pay her incredible overdrafts, part for her to live on, and part was stolen.

The worst part is that we are in a minus position again because of my family.

I would not and could not tell Enid this today, as they are filming. We couldn't cancel it even if we wanted to. I had money in the account to pay for the production today. It's gone, with the check reversals.

I know we have said to you the last two times that it is over, and it hasn't been. I am sorry for that. I feel this entire episode is taking place because I am being punished for something. I had to do something to deserve this. Enid and you have not. And yet, because I am being punished, and am married to your daughter, we had to involve you.

I will return to Pittsburgh during the Labor Day weekend and sell two million dollars of real estate to cover this. I dealt with that this morning. There is a buyer; I have no choice.

Every penny you loaned us will be repaid at market rates -- just like we were borrowing from a bank. It is my obligation to you.

The problem is this: We can't wire you money today, and we are in a desperate situation because of the reversals. The total is staggering, over \$200,000.00. I really am at a loss here; I will not upset Enid any more. I have failed her as a husband. My mother is ruining her campaign's chances.

The immediate needs are this:

1. Our media consultant is expecting a wire today for \$30,000.00 to cover the work they are

doing today and tomorrow. We cannot cancel it: Enid's campaign will be over if it isn't paid promptly. It would be a big scandal; there are film crews doing this and everyone talks.

- 2. Because Enid and I were putting in personal money for other campaign things, we were paying about \$25,000.00 in other bills.
- 3. The other money needs to be returned to First Security before I can sell the property at home. As usual, the needs are immediate and I cannot meet the obligation in time. I don't have a firm total because they are still tabulating it all. There were many checks that I handled for her. It is somewhere around \$200,000.

I want you to know that I have offered to leave Enid to stop hurting her and both of you. Whatever I did to cause this ruin and heartache, I am not aware of, but things like this don't happen without some cause!

If you still want me in the family after all that has happened, we can talk about you and Enid becoming more active with the trust and charitable responsibilities that I have. At this point in my life, after all that has happened, I have no desire to participate in these matters. My family's money has become such a negative in my life I wish we never had it and I weren't involved. It is only because my grandmother wanted me to do this that I have done so. I always tried to fulfill her wishes.

This money has been a source of great aggravation: Enid and I have shed too many tears over it. I have lost all confidence in myself as a person, husband, son and son-in-law. We have come to you so many times I am literally sickened. I used to be a person who helped people; now I am a leech.

My plan to repay you stands. It is just set back two weeks. Again. As for our current fiasco, if you could help, you will save the campaign. Enid never should have run this year. She is the right person for Utah with the wrong husband. I am the problem, not Enid. If you can't help, I understand completely. I have put everyone through enough.

I would have delivered this letter in person, and called you both, but campaign activities today prevent me from doing so. I feel that this, too, is a cowardly thing to do and yet I have responsibility here, and need to protect Enid from further harm. I will be in and out of the office and can be reached there.

I am including the wire information, not on the assumption or presumption that you will help, but if you do, you will need the information and I might not be available because of the filming day and the campaign has me everywhere anyway today.

1. Wilson Communications
First Union Bank of Virginia
Acct # 200 000 514 586 1
ABA# 051 400 549

They are owed \$30,000.

2. Joseph P. Waldholtz

Acct#

First Security Bank

ABA# 124 0000 12

This is the account that is overdrawn because of my mother. They still don't have a total figure (I just called as I was typing this) but they need at least \$25,000 now.

Quite an incredible sum, and that isn't the end of it. The total is over \$200,000.

Again, I will close on the real estate when I go back to Pittsburgh. We will have the money that we recover from the fraud (around \$935,000), plus the two million dollars in cash from selling property.

I want that much cash because I cannot go through this anymore! I cannot put Enid or you through it.

First Security would prefer that it all be settled by the close of business Friday. We are in a desperate and dangerous position; I accept all of the blame. We have covered what we can. The bank has about had it with me.

I would again offer to leave Enid but I promised her not to. If you think that I should, I think we should talk about that this weekend. I never have loved any woman in my life other than my wife; The pain that I am causing is too unbearable to live with. She deserves better. She really does. In my wildest dreams, I never imagined that this could happen to us. I am supposed to protect her and I have failed.

Well, I guess I will close now. I am sorry for wrecking your day, for imposing on you - emotionally and financially, and for letting everyone down. You are good people, you have always been there for us, and you don't deserve this.

I have to fight every impulse in my body not to be on the next flight out of here so Enid can remake her life. Enid has begged me not to do that. I have prayed for the answer to why is this happening. It hasn't come. Maybe I don't deserve even that. I don't know.

I know Mr. Greene has a flight up here later today, and I have again caused a problem. I have outlined how I plan to repay this. The immediate problem is a great one. You will never know how sorry I am.



BEFORE THE FEDERAL ELECTION COMMISSION

In re the Matter of)

MURS 4322 and 4650

D. Forrest Greene)

AFFIDAVIT OF MICHAEL LEVY

Before me the undersigned authority appeared, Michael Levy, who upon his oath deposes and states as follows:

- 1. Affiant Michael Levy has personal knowledge of the facts set forth in this Affidavit.
- 2. I joined the staff of Enid '94 as press secretary on Labor Day, 1994.
- 3. Shortly after I joined the campaign, I was approached by the campaign treasurer, Joseph P. Waldholtz.
- 4. Mr. Waldholtz knew that I had completed two years of law school and had worked in the Washington, D.C. office of Dickstein, Shapiro & Morin.
- 5. Mr. Waldholtz indicated that since I was a "lawyer," he wanted my advice on how to assign the proceeds of the sale of real estate to a third party.
- 6. Mr. Waldholtz indicated that he owned a piece of real estate in Pennsylvania that he wanted to sell, but that his lawyers did not understand how Mr. Waldholtz wanted to structure the transaction.
- 7. I volunteered to contact a friend of mine named Jim Kelly, an associate in the Washington, D.C. office of Dickstein, Shapiro & Morin, who I knew was familiar with real estate law.

- 8. I then called Mr. Kelly and left a message on his voice mail describing Mr. Waldholtz's request and asking Mr. Kelly for some sample documents that Mr. Waldholtz could use as a model.
- 9. When I did not hear back from Mr. Kelly, I called Emanuel Faust, a partner at Dickstein, Shapiro & Morin, described Mr. Waldholtz's request, and asked if Mr. Faust could provide some sample documents for Mr. Waldholtz.
- 10. When I spoke to Mr. Faust, I told him that Mr. Waldholtz needed a "boilerplate" document for the assignment of proceeds from the sale of real estate.
- 11. Shortly thereafter, I initiated a conference call between Mr. Faust, Mr. Waldholtz and myself so that Mr. Waldholtz could describe to Mr. Faust exactly what type of document he needed.
- 12. On September 23, 1994, Mr. Faust faxed to me a one-page assignment of proceeds form.
- 13. I took the fax directly to Mr. Waldholtz as soon as I received it.
- 14. On September 29, 1994, Jim Kelly faxed to me another model assignment of proceeds document with a note apologizing for the delay and asking me to call if I had any questions.
- 15. I delivered this second fax to Mr. Waldholtz the same day I received it.

FURTHER AFFIANT SAYETH NOT

Michael Levy

SUBSCRIBED AND SWORN TO before me this $\frac{34}{2}$ day of July, 1997

Notary Public

My Commission Expires:

Notery Public, Destate of Octobies
Wy Commission Expires Just 14, 1368

(
• •
•
7
• •
T OF PROCEEDS
the "Seller", as seller pursuant tract dated] (the
eys, assigns and transfers to
and assigns all of the right, in and to the proceeds from the
emplated by the Agreement (the.
itutes and appoints
er of substitution, in the
behalf of and for the benefit of ors and assigns, to demand and
d hereunder and to give receipts
of the same, and any part to institute and prosecute in the
the expense and for the benefit sors and assigns, any and all
r otherwise, which,
deem proper for the collection of der or for the collection and
ht of any kind hereby conveyed,
ered.
it is without recourse, represen-
undersigned has caused this and its corporate seal to be
(Seller)
Ву
Name: Title:

DICKSTEIN, SHAPTRO & MORIN, ELP.

2101 L Street N.W.

Washington, DC 20037-1526

Telaphous: (201) 785-9700

Facimile: (202) 887-0629

Ment by

JoE:

FACSIMILE TRANSMISSION COVER SHEET

DATE: September 29 1999	
RECEIENT NAME MICHAEL	LANG.
COMPANY:	
BAX: 807 - 328-1996	
TELEMENTS: 801-338-1994	
	The state of the s

NUMBER OF PACES (Including Cover Shoot):

This presentation is intended for the cale was of the individual and called to where it is addressed, and may commit belorgeties that is privileged, confidently and compilities disclosure under explicable les. You are bereity method that any distribution, therebution or deplication of this tremstation by comment other than the internated addresses or its designated agent is seriotly problemal. If your receipt of this transcission to in error, places south this tires instantiately by collect call in (1971) DG1-0104, and med the original transmission to on by rithers mail at the above subfires.

PRODE JEE LE L'I	
TELEPEONE: 203-861-9179	OTE BEE
CLERTS: 24990.300	YOU MEAN

f.

M.L. & Sonn, for the defy. Gove Leel with any question. The ic to you know. (2)

ll per experience any transmission difficulty, contact car fundamic Baga. (203) 861-7196.

Ď.



COVENANT NOT TO ENCUMBER AND ASSIGNMENT OF PROCEEDS

KNOW ALL MEN BY THESE PRESENTS, that for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned.

"Undersigned"), hereby werrabts and represents to

(the

"Lander"), and does agree with the Lender as follows:

- l. The Undersigned is now seized in fee simple of the land and improvements known as
- , as the same are duly dedicated, platted and recorded in of the land records of

(the "Property").

Deed of Trust Promissory Notes dated April 15, 1986, one (1) in the original principal amount of Five Million Eight Hundred Sixty-two Thousand Eight Hundred Forty Dollars (\$5,862,840.00) or so much thereof as shall be advanced (together with all extensions, renewals and modifications thereof, or substitutions therefor, "Note A"), and the other in the original principal excunt of Eight Million Three Hundred Thirty-seven Thousand Che Mundred Sixty Dollars (38,337,160.00) or so much thereof as shall be advanced (together with all extensions, renewals and medifications thereof, or substitutions therefor, "Note B").

ENID 34

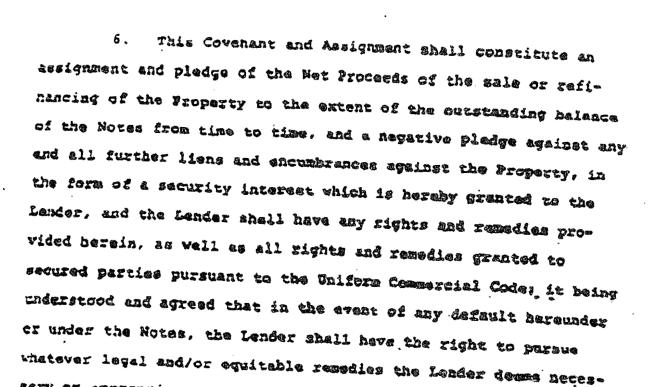
Page 83 PAGE.803

hsse her he co

)

ì

Covenent and Assignment.



7. At the request of the Lender, the Undersigned agrees—
to execute such further documents as the Lender may reasonably
require to cause a lieu or encumbrance in favor of the Lender to
be recorded against the interest of the Undersigned in and to the
Property. If a lieu or encumbrance is so recorded, the Lender
egrees that the same shall be released (at no expense to the
Lender) upon payment of the Net Proceeds to the Lender in accordance with this Covenant and Assignment or upon full payment and
satisfaction of the Notes.

sary or appropriate to enforce the terms and intent of this

8. This Coverant and Assignment shall be governed by the laws of the District of Columbia, shall be jointly and severally binding upon the Undersigned and its personal



Descriptive Name: Memo - Traditional style

Descriptive Type: forrest.mem

Creation Date: 1/19/94 11:20:09 AM

Revision Date: 9/21/94 2:42PM

Author: KENNETH

Typist: KENNETH

Subject:

Account:

Keywords:

Abstract:

Password: "LIE"

Memorandum

To:

Mr. D. F. Greene clo East-West Co.

CC:

Mr. and Mrs. Joseph P. Waldholtz

From:

The Waldholtz Family Trust

Date:

September 21, 1994 [computer file date]

Subject:

Assignment Letter and US Attorney Infornation

Mr. Greene, we apologize for the delay in sending the materials to you. Joe and Enid asked that we send you the assignment of the real estate and the letter from the U.S. Attorney. We apologize for the delay and the confusion.

If we can be of further assistance, please give us a call.

Thank you.



HOLME ROBERTS & OWEN LLC Brent V. Manning #2075 111 East Broadway, Suite 1100 Salt Lake City, Utah 84111 Telephone: (801) 521-5800

Attorneys for Plaintiff, D. Forrest Greene

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

	•	
D. FORREST GREENE,)	_
Plaintiff,) COMPLAINT	
v	,)	
JOSEPH P. WALDHOLTZ,) }	•
Defendant.) Civil No. 960903017 cv	

- D. Forrest Greene, for his cause of action against defendant Joseph P. Waldholtz, alleges as follows:
 - 1. Plaintiff is a resident of Salt Lake County, State of Utah.
- 2. Defendant Joseph P. Waldholtz ("Waldholtz") is a resident of Pennsylvania presently confined in jail in Allegheny County, Pennsylvania.
- 3. Venue in this district is appropriate since plaintiff is a resident of Salt Lake County and all or part of this cause of action arose in this County.
- 4. This Court has jurisdiction over defendant pursuant to Utah Code Ann. § 78-27-24 because defendant was a resident of the State of Utah at the time this cause of action arose.

Defendant conducted business in the State of Utah from which this cause of action arose and defendant caused injury to plaintiff in Utah in part during the time plaintiff was a resident of Utah.

- 5. Beginning on January 21, 1994 and continuing through October 12, 1995, plaintiff loaned to defendant, or paid obligations of the defendant at defendant's request, amounts totaling \$3,987,426.00 (the "Loan Amount"). A summary of the checks and wire transfers from plaintiff to, or for the benefit of Waldholtz, is attached hereto as Exhibit "A." Documents evidencing each transfer are attached hereto as Exhibit "B."
- 6. At the time the plaintiff loaned money to, or paid obligations for the benefit of defendant, defendant was married to plaintiff's daughter and occupied a position of trust and confidence with plaintiff giving rise to fiduciary duties by defendant to plaintiff.
- 7. Defendant exploited his close family relationship, his position of trust and confidence and breached his fiduciary duty to plaintiff by inducing him to advance the Loan Amount to defendant based upon, but not limited to, the following material misrepresentations, all of which were false when made:
 - a. That he was the beneficiary of a Waldholtz Family Trust which had a value of approximately \$325 million (with substantial monthly income for his benefit).
 - b. That the money from the Waldholtz Family Trust was temporarily unavailable to Waldholtz but that he would shortly repay all borrowed funds with money from the Waldholtz Family Trust.

- That, at approximately the time of Waldholtz's marriage to Mr. Greene's daughter.
 Enid Greene, (August 1993), he had given Enid Greene a gift of approximately \$5
 million;
- d. That his mother had been the victim of a "telemarketing scheme" which caused her to "overspend" or overdraft one or more of her accounts. Money was not available from the Waldholtz Family Trust to rectify this because it was "tied up" and that the money borrowed in January and February 1994 would be used to discharge these obligations;
- e. That his mother had been duped by a con-man who was then in jail and that this too could not be rectified with the Waldholtz Family Trust money because it was "tied up" and that the amount borrowed would be used to discharge these obligations.
- 8. Waldholtz made the above misrepresentations repeatedly during the period from January 1994 through October 1995. These misrepresentations were made in person in Salt Lake City and by telephone from the defendant in Washington, D.C. and/or Salt Lake City to the plaintiff in San Francisco, California.
- 9. Plaintiff relied on the truthfulness of the foregoing representations when he loaned defendant the Loan Amount. Had plaintiff known that the foregoing representations were false, that Waldholtz did not intend to use the money for the purpose stated and that Waldholtz had no ability to repay the money plaintiff loaned to him, plaintiff would never have loaned any money Waldholtz.
- 10. As a result of Waldholtz's fraudulent misrepresentations and breach of fiduciary duty plaintiff has been damaged in the amount of \$3,987,426.00.

WHEREFORE, plaintiff prays that judgment be entered in favor of plaintiff and against defendant Waldholtz in the amount of \$3,987,426.00 plus his costs herein.

DATED this _______ day of May, 1996.

HOLMEROBERTS & OWEN LL

Brent V. Manning, #2075

Attorneys for Plaintiff, D. Forrest Greene

Plaintiff's Address:

D. Forrest Greene 1456 E. Penrose Drive Salt Lake City, UT 84103



EXHIBIT "A"

FUNDS TRANSFERRED TO JOSEPH P.WALDHOLTZ FROM D. FORREST GREENE

Date of Check or Wire	Personal Check or Wire Transfer	Source Account	Amount	Deposited to (account)	Date of Deposit
01/21/94	wr	Smith Barney	\$60,000.00		01/21/94
02/01/94	PC	Nuveen	24.000.00		02/04/94
04/29/94	PC	Nuveen	56.000.00		05/04/94
05/09/94	PC	Nuveen	60.000.00		05/11/94
05/16/94	PC	Nuvecn	75,000.00		05/17/94
06/21/94	WT	Wells Fargo	80.000.00		06/21/94
07/0794	wr	Wells Fargo	150,000.00		07/07/94
07/07/94	WT	Wells Fargo	10.000.00		07/07/94
08/08/94	wī	Wells Fargo	83.000.00	_	08/08/94
08/25/94	PC	Wells Fargo	55,000.00		08/25/94
09/02/94	wt	Wells Fargo	187.000.00		09/02/94
09/12/94	PC	Weils Fargo	150,000.00	•	09/14/94
09/19/94	WT	Wells Fargo	381,000,00		09/19/94
10/13/94	WT	East/West Securities	336,000.00		10/18/94
10/21/94	WT	East/West Securities	400,000.00		10/21/94
10/28/94	wr	East/West Securities	350,000.00		10/28/94
11/08/94	WT	East/West Securities	69,000.00		11/08/94
11/14/94	wt	East/West Securities	200,000.00		11/14/94
01/09/95	wr	East/West Securities	275,060.00		01/09/95
04/11/95	wt	East/West Securities	408,000.00		04/11/95
07/18/95	wt	East/West Securities	13,000.00		07/18/95
08/15/95	wr	East/West Securities	250,000.00		08/15/95
08/15/95	WΤ	East/West Securities	7,426.00		08/15/95
10/12/95	wt	East/West Securities	308,000.00	†	10/12/95
TOTAL			\$3,987,426.00		

^{*}Joint Account of Joseph P. and Enid Waldholtz

A WALL AND ONLY DO

January 21, 1994

Smith Barney Shearson, Inc. One Sansome Street, 29th Floor San Francisco, CA 94104

To Whom It May Concern:

You are hereby authorized to wire funds for the amount of \$60,000 from my to the following:

PITTSBURG NATIONAL CORP.
ABA # Company Weldholtz
Account # Company Weldholtz

Thank you for your prompt attention to this matter.

Sincerely,

Dunford F. Greene

My.

ij.

1 Sansome SL 29Th. Floor S.F. Ca. 94104



Dunford F Greene 235 Montgomery St San Francisco CA 94104-2902 01/21/94

As you have instructed, we have completed a Federal Fund Money Transfer in the amount of \$50,000.00

From: Your Account



To: Pne Bank, N.A.

For the benefit of

, Joseph Waldholtz

The transfer agent has confirmed that this transfer was executed as a Federal Funds transaction with paid ref number 012181Q6681C002488.

Additional comments transmitted with the Money Transfer were: "3rd Party Fed Fund Transfer."

Your account has been charged \$25.60 for the above transaction.

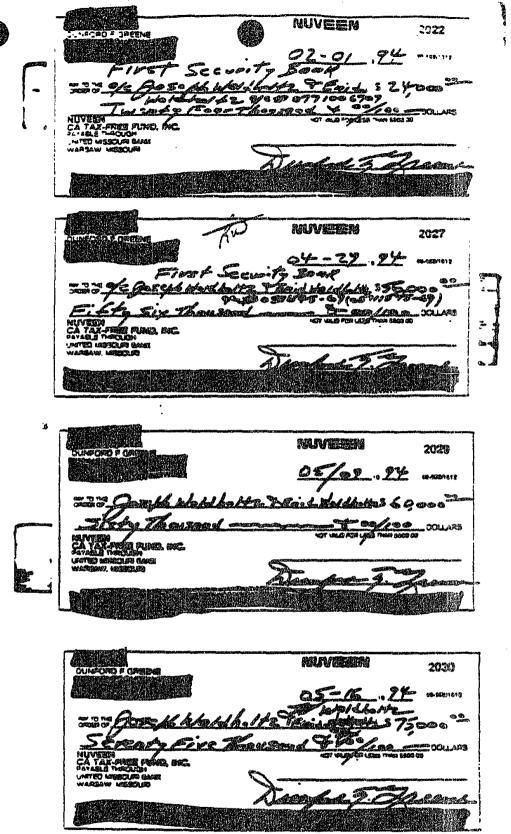
If any of the above information is not in accordance with your instructions, please contact the manager of your Branch immediately.

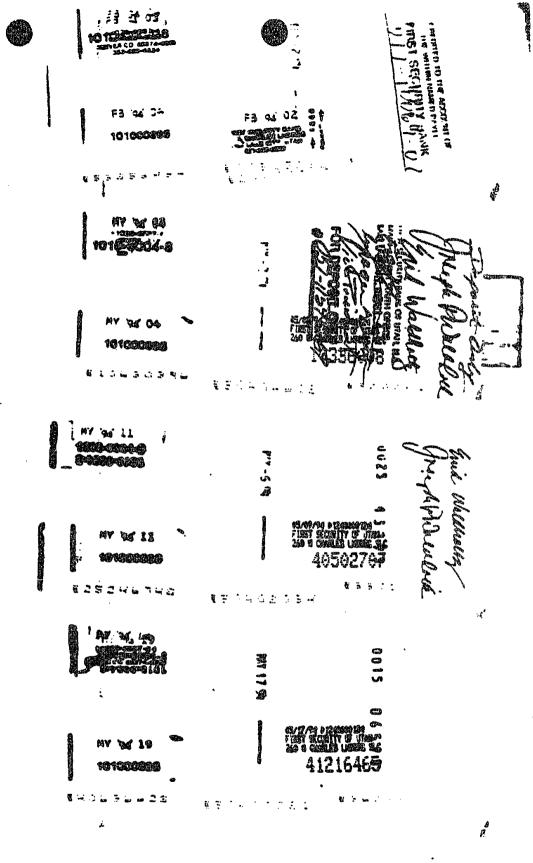
Sincerely,

Rest I. Elsent.

Richard L Editual
First Vice President
Credit/Audit Control

F001152





F00:147

029-035 00-93

Ů:

CPS-000 03-90

form fundamental form for the first form for the fi MOSEPH P WALHOLTE 高etails of Coarges:71:REN ment Type:FED RECEIVE webit Advice: Type Otice: 1000 Prof Cote: CTP Organisa (1990)

Dabits

TO P LAUNGLIZZACHOSI100F551

4651

Sunc: INV

H P. WALHOLTZ/AC-0511007551

JECLS FARGO PANK BAN FRANCISCO, CA

Sand Corr :53 :

SALT LAKE CITY, UT Mar Carr :

武nter Bank:56

論cct With 157 :

Beneficiary im :JOWAJO

gioseph p. Waldholiz

Pender : M :WEFASA A/C://FW121000048 Code:

Bnd. Rev Br: A : FSBUUSSS MEIRCT SECURITY BANK OF UTAH

Key: GP19940707ME-0000-000420-00

174000012 121000248 1000 06938 150,000.00

Code:

Code:USDNOSTO1 A/C:0000000 T 17/04 Amt:USD 150,000.00 07/07/94 Amt:USD 150,000.00 1032PH P. WALDHOLIZ 1052PH P. WALDHOLTZ Code: Code:USDPANLO1 07/07/94 Amt:USD 11.00 Fee/ChargesUSD :stoC

A/C:

Itabus: Completed | CC modified BBK field modified School Subject : SNSERV Date: 94/07/07 Time: 15:08:45 Info:HOSTSEG: 199407070831 Figure Receive: TH Date: 94/07/97 Time: 15:08:38 Outsity Receive: PD Date: 94/07/07 Time: 14:55:11 Thomas Gueue : ESDSRV Date: 94/07/07 Time: 14:52:33

EVEDER RECEIVE

A/C:

A/C:

A/C:

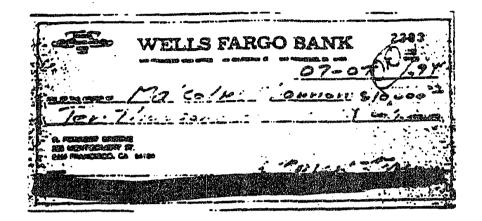
A/C:

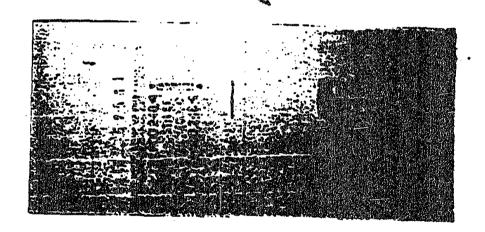
: FEDSRV Date: 94/07/07 Time: 14:52:33

FUNDS THANSFER *4/10/10 awa ile which parains expers were es us usad ulei ett mudek opmissede in paul Juardy v material WELLS FARGO BANK

ADVICE

F001114







395-033-03-93

WEBS - OUTGOIL WIRE TRANSFER REQUEST WELLS FARGO BANK Transfer from account: YOUR TRANSFER FROM ACCOUNT WILL BE CHARGED A FEE FOR PROCESSING THIS WIRE orvest breene ANSFER FEE AMOUNT: \$ _____ (U.S. Dollers) TRANSFER FROM ACCOUNT NUMBER: Cry/Sumi/Zug Must be a Walls Fargo Bank chacking, savings, market rate or wholesale checking account IF WIRING FOREIGN CURRENCY COMPLETE FIELDS BELOW: U.S. DOLLAR AMOUNT: foreign currency mame: 00 000 FOREIGN CURRENCY AMOUNT: COMPLETE IF TRANSACTION DATS OTHER THAN TODAY: SEND DATE: U.S. DOLLAR EQUIVALENT: of correct electron and if desc MONTH then make n. For Bandillass Order For Bank Use Only: RATE Wires in Process Account Funded by: A Customer paid with cash REQUIRED IF OVER \$15,000,00 U.S. DOLLAR EQUIVALENT: Customer paid with check COMPACT NUMBER: FX TRADER CONTACT: . C Customer past through account other than checking. sevings, MRA or WDDA. Other Account (i.e. CD or least econume) BENEFICIARY INFORMATION: P. Woldholtz BENEFICIARY BANK INFORMATION: vicervatione Seri Code (# Appricable): MOITAMROYMI JANOIT90 JANOITIDDA Special intonmetion for Beneficiary Special información For Banchiciary Banco My signature here indicates agreement to all the information on this Outgoing Wire Transle/Request and to the terms and conditions of the Wire Transfer Agreement For One Funds Transfer on the reverse of this Request. Wells Fargo Bank is authorized to rely on the information on this Request in making this process. guestestatis transfer. istomer's LF001143 Sank Ondinator CI MAT

Line Detect

```
PROGRAM: GENAPP_DEALE | OPERATOR: TRUCE
      ***Soreen Emparation
                                                             DEED RECEIVE
                                                                                                                                            11-40,-1975 (5:10:
     Key: GP19940803MF-0000-000247-00
     OBOBLIQUE 14A000972 08081359 ETIL N 08081359 000247
      34000012 121000248 1000 03781 83.000.00
     LELL FARGO SE /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=IST SECURITY BANK OF UTAH 79 SG. MAIN ST. SALT LAKE
    Source:FEBWI MT:100 Session: Senders Reference:03781
Sate:08/08/94 Time:10:01 Seq:00000 Customer Reference:
Priority:N Del mon: Unit: System Reference:
Value:08/00/94 Cur:USD Amount: 82,000.00
Souther : M:WEFASA Order Cust:500:
Code:
      TY UTUSA BNF=JOSEPH P. WALDHOLTZ/AC-0511007551 BBI=SORT CODE: 124000012.
     Santer : M :WEFASA Order Cust:50D :
A/C://FW121000248 Code: A/C: D FORREST GREENEFIRET SEC 3L2
M USLLS FARGO BANK
SAN FRANCISCO, DA
E Send Corr :53 :
                                                                                            Order Bank:52 :
 Resert Corr :53 : Urder Bank:52 :

E Sod/Rov Ph: A :FSBUUS55 A/C://

E SISSI SECURITY BANK OF UTAH Advice: By: Info:
                                                                                           A/C:// Code:
SILT LAKE CITY,UT
T BEK Corr : ::
                                                                                            A/C:
                                                                                                                                                        Code:
Inter Bank:56 :
                                                                                             A/C:
                                                                                                                                                       Code:
     Acct With :57 :
                                                                                            A/C:
                                                                                                                                                       Code:
Beneficiary in :304A30
                                                                                           A/C:
                                                                                                                                                       Code:USDDDA01
TOSEPH P. WALDHOLTZ
                                                                                           Advice: By: Info:
                                                                                            Bank:
The contract of the contract o
                                                                                            Tank to Bank Information: TD:
                                                                                            SORT CODE: 124000012
The results of Changes:71:BEN Syment Type:FET RECEIVE
                                                                                         Charge/fee :USD
                                                                                                                                                       II.00 By:BE?
     Pebit Advice:
     Type Code: 1000
     Préd Cota: CTP
     Ing Dept.
     wee Code: EC
    MELL TARGO SF /ORG=D FORREST GREENE :- TOTAL SALT LAKE STATE SECURITY BANK OF UTAH 79 SO, MAIN ST. SALT LAKE
       TY UTUER THE = JOSEPH P. WALDHOLTZ/AC-OS11007551 BBI=SORT CODE: 124000012
    Debits Code:USDNCSTOI A/C Credits

101:0310310310 Code:USDNCSTOI A/C Code:USDDDA01

103:03/94 Ant:USD 83,000.00 09/03/94 Ant:USD 82,989.00

103:00/08/94 Ant:USD Code:USDPANLOI

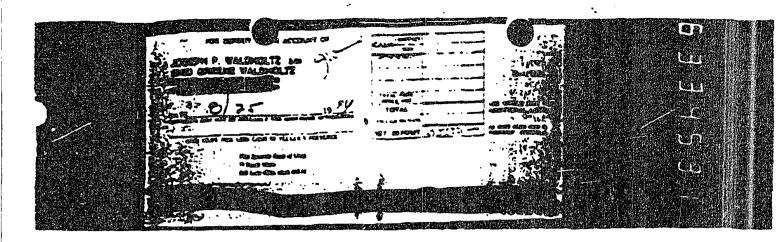
103:00/08/94 Ant:USD Code:USDPANLOI

11:00
     Fee/ChargesUSD
                                               Code:
                                                                                                                                                  : stoo
       tatua: Completed | FC modified
                                                                                                               BBK field modified
      Terver Output : SNSERV Date: 94/00/08 Time: 12:48:26

Info:HOSTSEG: 199408080525

Spprove Receive: TH Date: 94/08/08 Time: 12:48:22

Sualify Receive: RD Date: 94/08/08 Time: 12:15:22
```





Bank Onginatoka Signeture:

X Line Date:

Line Date ______ F001142

***Screen Expansion PROGRAM: BENAPP_TUDGE | DPERATOR: TRUD: ED RECEIVE 22-NOV-1995 10:50:30 Func: INV Key: GP19940902MF-0000-000198-00 0902L1QWF14A000512 09021256 FT1L N 09021256 000198 · `000012 121000248 1000 02642 187.000.00 L_L FARGO SF /ORG=D FORREST GREENE
FIRST SEC SLC /CIR/88K=FIRST SECURITY BK OF UTAH 79 SO. MAIN STREET SALT LAP E CITY UT BNF=JGSEPH P WALDHOLTZ ENID G WALDHOLTZ/AC-0511007551 Source:FEDWI MT:100 Session: Senders Reference:02642

Date:09/02/94 Time:10:57 Seq:00000 Customer Reference:

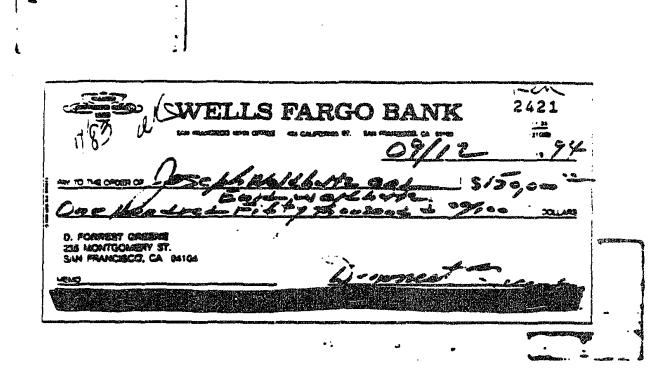
Priority:N Del Mon: Unit: System Reference:

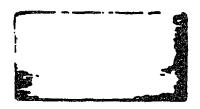
Value:09/02/94 Cur:USD Amount: 187,000.00

Sender : M:WEFASA Order Cust:50D:

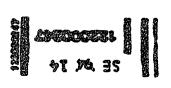
Δ/C://FW121000248 Code: A/C: Code: Sender : M:WEFASA A/C://FW121000248 Code: WELLS FARGO BANK D FORREST GREENEFIRST SEC SLC SAN FRANCISCO, CA Send Corr :53 : Order Bank:52 :
Sind/Rev Bk: A : FSBUUS55 A/C://FUS A/C://FUS By: Info: SALT LAKE CITY, UT BBK Corr : Inter Bank:56 A/C: Code: A/C: Code: A/C: A/C:CO By: Info: Acct With :57 : Code: Beneficiary :M :JOWAJO Code:USDDDA01 JOSEPH P. WALDHOLTZ Bank: JOSEPH P WALDHOLIZ ENID G WALDHOLIZ Bank to Bank Information:72: F ment Type:FED RECEIVE
Debit Advice: Charge/fee :USD 11.00 By:BEN Type Code: 1000 Prod Code: CIR Org Dept: Fee Code: FC WELL FARGO SF . /ORG=D FORREST GREENE FIRST SEC SLC - /CTR/BBK=FIRST SECURITY BK OF UTAH 79 SO. MAIN STREET SALT LAK E CITY UT RNF=JOSEPH P WALDHOLTZ ENID G WALDHOLTZ/AC-0511007551 Debits Credits A/C:0310310310 Code:USDNOST01 A/C: Code:USDDDA01
09/02/94 Amt:USD 187,000.00 09/02/94 Amt:USD 186,989.00
DUE TO/DUE FROM FED NOSTRO JUSEPH P. WALDHOLTZ
A/C: A/C: A/C: Code:USDPANLO1
/ / Amt: 09/02/94 Amt:USD 11.00 11.00 Fee/ChargesUSD A/C: Code: A/C: { Code:

A/C: Code: A/C: Co
Status: Completed FC modified BBK field modified
Server Output : SNSERV Date: 94/09/02 Time: 11:05:02
Info:HOSTSEQ: 199409020357
Approve Receive : RD Date: 94/09/02 Time: 11:04:56
Qualify Receive : TH Date: 94/09/02 Time: 11:00:18
pair Queue : FEDSRV Date: 94/09/02 Time: 10:57:09
Entry : FEDSRV Date: 94/09/02 Time: 10:57:09

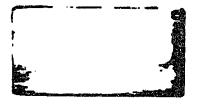




TO SEE THE STAND IN ORD THE SEE THE SE



I (??00121 H/H/60



TAM ID

325-033 33-33

Bank Onginator's Signature:

Func: INV Key: GP19940919ME-0000-00 0919L1QWEI4A001384 09191536 FT1L N 09191536 000382 124000012 121000248 1000 05564 381.000.00 W' FARGO SE /ORG=D FORREST GREENE
FIRST SEC SLC /CTR/BBK=FIRST SECURITY DK OF UTAH SALT LAKE CITY UT- BNF=3038P H P. WALDHOLTZ ENID G. WALDHOLZ/AC-0511007551 Source:FEDWI MT:100 Session: Senders Reference:05564

Date:09/19/94 Time:13:37 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
Value:09/19/94 Cur:USD Amount: Value:09/19/94 Cur:USB Amount: 391.000.00 Sender : M :WEFASA Crder Cust:50D : A/C://FW121000248 Code: A/C: Code: WELLS FARGO BANK D FORREST GREENEFIRST SEC 510 SAN FRANCISCO.CA Order Bank:53 : Send Corr :53 : A/C:/Advice: Ey: Info: Shd/Rev Bk: A :FSBUUS55 EIRST SECURITY BANK OF UTAH SALT LAKE CITY.UT A/C: BBK Corr : : Code: inter Bank:56 ∶ A/C: Code: Acet With :57 : A/C: Code: Beneficiary : M : JOWAJO Code: USDDDDA01 Advice: JOSEPH P. WALDHOLTZ By: Info: Bank: Bank to Bank Information: 72: Details Of Payment:70: ENID G WALDHOLZ Details of Charges:71:BEN Fr ent Type:FED RECEIVE Charge/fee :USD 11.00 By:BEN Dellt Advice: Type Code: 1000 Prod Code: CIR Org Dept: Fee Code: FC WELL FARGO SE /ORG=D FORREST GREENE .
FIRST SEC SLC /CTR/BBK=FIRST SECURITY BK OF UTAM SALT LAKE CITY UT BNF=JOSEP H P.WALDHOLTZ ENID G.WALDHOLZ/AC-0511007551 Debits

A/C:0310310310

Code:USDNOST01 A/C:0

09/19/94 Amt:USD

DUE TO/DUE FROM FED NOSTRO

A/C:

/ / Amt:

Debits

Code:USDNOST01 A/C:0

JOSEPH P. WALDHOLTZ

A/C:

09/19/94 Amt:USD credits Code:USDDDA01 380,989.00 Code:USDPANLO1 11.00 Fee/ChargesUSD A/C: Code: Code: BBK field modified

Status: Completed FC modified BBK field modified Server Output : SNSERV Date: 94/09/19 Time: 13:40:54 Info:HOSTSED: 199409190690 Approve Receive : IH Date: 94/09/19 Time: 13:40:49 Qualify Receive : TKC Date: 94/09/19 Time: 13:39:46 Receive : FEDSRV Date: 94/09/19 Time: 13:37:01 E ry : FEDSRV Date: 94/09/19 Time: 13:37:01

```
22-NOV-1985 12:04:2
 Eunc: INV
                       PED RECEIVE
 Key: GP19941018MF-0000-000381-00
 NEED FULL BNF IN DETAILS
 -~USTY : 18-Oct-94 01:52 PM :
   1018B1Q8153C003907 10181535 FT1B N 10181535 000361
 124000012 021000018 1000 FTJ9410181255200 336,000.00
 BK OF NYC / CRG=DEORREST GREENE
 EST SEC RK UT SLC /CTR/BNF=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//981=- OUR E
 J9410181255200
 Source: FEDWI MT:100 Session:
                                   Senders Reference: ETJ9410191255200
 Date: 10/18/94 Time: 13:35 Seq: 00000
                                   Customer Reference:
                      Unit:
 Priority:N Del Mon:
                                   System Reference:
                      Value:10/18/94 Cur:USD Amount:
                                                          336.000.00
🗐 Sender : M :NEYONE
                                   Order Cust:50D :
                                   A/C: %
                      Code:
題A/C://FW021000018
                                   DEORREST GREENEEST SEC BK UI SLC
BEANK OF NEW YORK
ENEW YORK
₫ Send Corr :53 :
                                   Order Bank:52
                                   A/C://
mand/Rev Bk: A :FSBUUS55
                                                        Code:
MEIRST SECURITY BANK OF UTAH
                                  Advice:
                                                  Info:
*SALT LAKE CITY, UT
                                  A/C:
                                                        Code:
∰ BBK Corr :
□ Inter Bank:56
                                   A/C:
                                                        Code:
                                   A/C:
                                                        Code:
*Acct With :57
                                  A/C
                                                        Code:USDDDA01
Beneficiary : M : JOUAJO
震 JOSEPH P. WALDHOLTZ
                                  : 95 ivtA
                                                  Info:
                                   Bank:
                                  Bank to Bank Information:72:
 Details Of Payment:70:
 JOSEPH AND ENID WALDHOLTZ X
                                  - OUR FTJ9410181255200
 Details of Charges:71:BEN
                                                   11.00 By:BEN
 Payment Type: FED RECEIVE
                                  Charge/fee :USD
 Debit Advice:
 Type Code: 1000
 Prod Code: CTR
 Org Dept:
 Fee Code: FC
             /ORG=DFORREST GREENE
 FSI SEC RK UT SLC /CIR/BNF=JOSEPH % ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR F
 J9410181255200
 Debits
                                                 Credits
                      Code:USDNOSTO1 A/C:
                                                        Code:USDDDA01
 A/C:0310310310
                        336,000.00 10/18/94 AME:USD
 10/18/94 Amt:USD
                                                           335.989.00
                                   JOSEPH P. WALDHOLTZ
 DUE IO/DUE FROM FED NOSTRO
                                  Code:USDPANLO1
 A/C:
                     Code:
                                                                11.00
  / /
         Amt:
                                   Fee/ChargesUSD
                                                        :st.ol
 A/C:
                     Code:
 Status: Completed FC modified
   'rver Output : SNSERV Date: 94/10/18 Time: 14:41:40
                Info:HOSISEQ: 199410180776
  Approve Receive: RD Date: 94/10/18 Time: 14:41:34
```

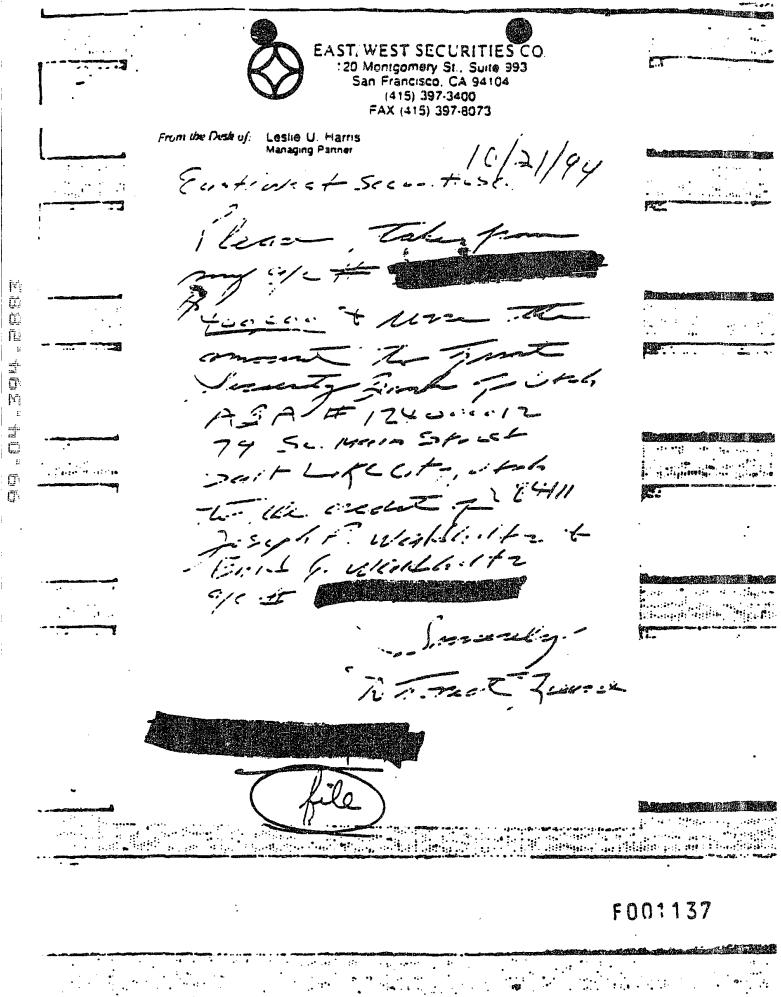


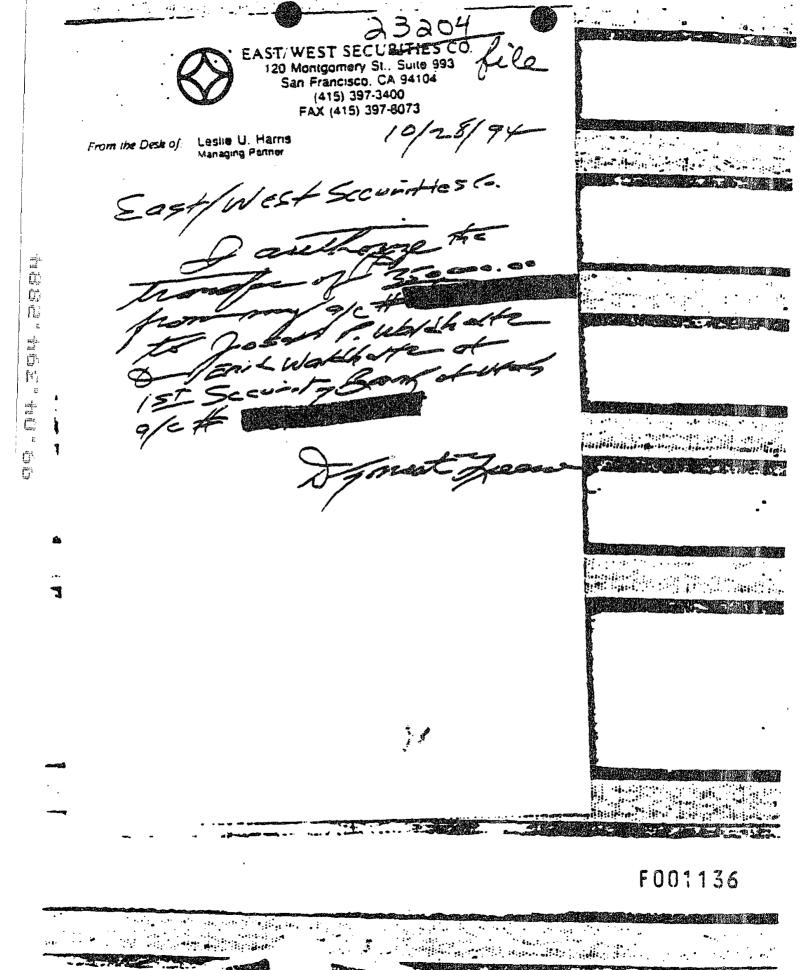
EAST/ WEST SECURITIES CO. 120 Montgomery St., Suite 993 San Francisco, CA 94104 (415) 397-3400 FAX (415) 397-8073

From the Desk of: Laslie U. Harris Managing Pariner

Srean e

Danish 1336 H Tompleton 1336 H Tompleton 160/ Lholfy + Joseph F. Wallholfy) from 9/4 fr and Motes alma.





To East/West Securities Co

Please treat This as your getherity to tote 52/ (2700) from my 9/4 #

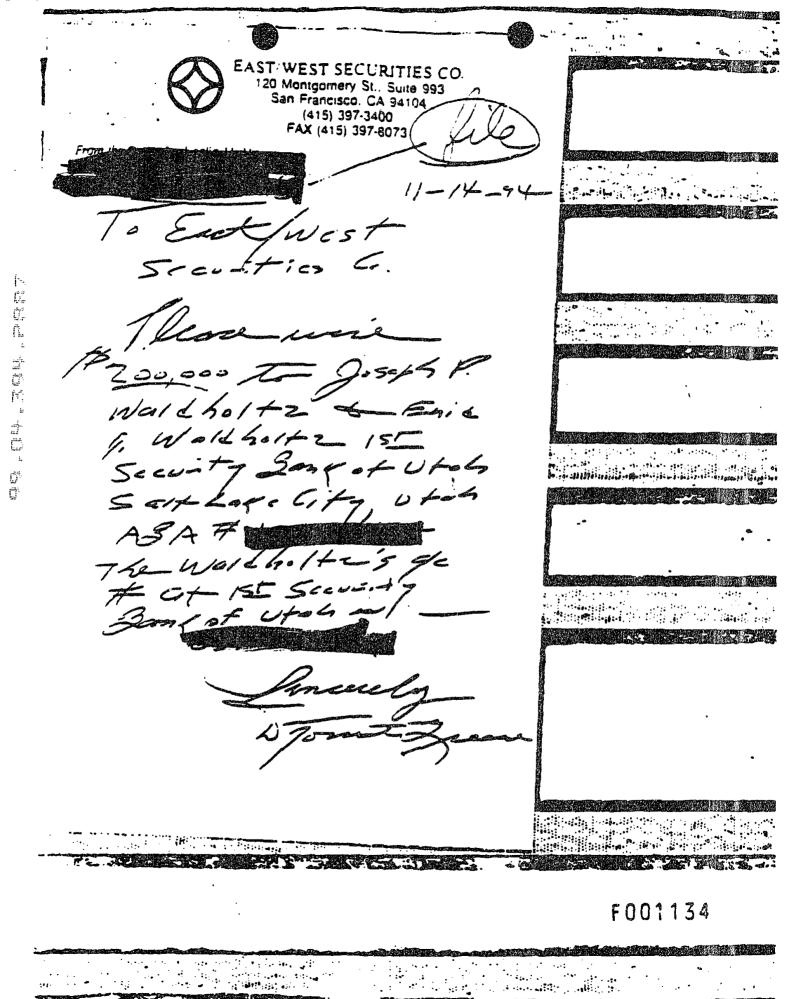
These funds to the credit of graph & Enil woldholds

FILST SECURITY BONT of Ufal asa # The

Thorty.

```
大大大コン・ピセ ト コンドコ・ラーマン
 Func: INV
                     FED RECEIVE
 Key: GP19941108HE-0000-000389-00
 PER HOGAN
 : TROY : 08-Nov-94 01:50 PM :
   1108B1Q8153C004042 11081541 ET1B N 11081541 000389
 124000012 021000018 1000 FTJ9411086375500 69.000.00
 HK OF NYC /ORG=DEORREST GREENE
 FST SEC BK UT SLC /CTR/BNF=JOSEPH & ENID WALDHOLTZ X/AC-0511007581//881=- BUR F
 J9411086375500
 Source: FEDWI MI:100 Session: Senders Reference: FIJ9411086375500
Date:11/08/94 Time:13:44 Seq:00000 Customer Reference:
Priority:N Del Hon: Unit: System Reference:
                   Value:11/08/94 Cur:USD Amount:
                                                   39,390.30
Sender : M :NEYONE Code:
                               Order Cust:50D :
                               A/C:
BANK OF NEW YORK
                               DEORREST GREENEEST SEC BK UT SLC
 NEW YORK
                               Order Bank:52
Send Corr :53 :
                              A/C://
Advice: By: Info:
Sod/Rev Bk: A :FSBUUSSS
FIRST SECURITY BANK OF UTAH
SALT LAKE CITY.UT
⊞BBK Corr :
                               A/C:
                                                    Code:
□Inter Bank:56
                               A/C:
                                                    : sto O
"Acct With :57 :
                               A/C:
                                                    Code:
Code:
TZZZZ
                               Advice:
                                          By:
                                              Info:
                               Bank:
                               Bank to Bank Information:73:
Details Of Payment:70:
                              JOSEPH AND ENID WALDHOLTZ
Details of Charges:71:BEN
                               Charge/fee :USD
                                                LI.00 By:BEN
Payment Type: FED RECEIVE
 Debit Advice:
Type Code: 1000
Prod Code: CTR
Org Dept:
Fee Code: FC
BK OF NYC /ORG=DEORREST GREENE
FSI SEC BK UT SLC /CTR/BNF=JOSEPH & ENID WALDHOLTZ X/AC-0511007581//BBI=- OUR FI
J9411086375500
Debits
                                              Credits
                                        Code:USDSUSP01
Aat:USD 68,989.00
                    Code:USDNOSTO1 A/C
A/C:0310310310
                   69,000.00 11/08/94
11/08/94 Amt:USD
DUE TO/DUE FROM FED NOSTRO
                               2777
               Code:
                               Code:USDPANLO1
A/C:
 / / Amt:
                                                           11.00
                               Fee/ChargesUSD
                                                   Code:
                                A/C:
------
                   :sbo3
A/C:
Status: Completed FC modified
                                      beilibom bleil 3MG
 rver Output : SNSERV Date: 94/11/08 Time: 13:51:16
                Info:HOSTSEQ: 199411080712
```

Approve Receive: RD Date: 94/11/08 Time: 13:51:12



```
Func: INV
                    ED RECEIVE
                                                20-404-1975 10:24:19
 Key: GP19941114MF-0000-000502-00
 BNE
 :RUSTY : 14-Nov-94 02:08 PM :
   1114B1Q8153C00G213 11141G01 FT1R N 11141G01 000502
 124000012 021000018 1000 FTJ9411141257100 200,000.00
 BK OF MYC /ORG=DEORREST GREENE
 FST SEC BK JUT SLC /CIR/BNE=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//881=- DUR FT
 J9411141257100
 Source: FEDWI MT:100 Session:
                               Senders Reference: ETJ9411141257100
Date:11/14/94 Time:14:04 Seq:00000 Customer Reference:
Priority:N Del Mon: Unit: System Reference:
                   Value:11/14/94 Cur:USD Amount:
                                                    200,000.00
                               Order Cust:50D:
Sender : M :NEYONE
A/C://FW021000018 Code:
                                A/C:
                                                   Code:
BANK OF NEW YORK
                                DEORREST GREENEFST SEC BK UT SLC
NEW YORK
Bend Corr :53 :
                               Order Bank:52 :
A/C://F
Sind/Rev Bk: A :ESBUUSSS
FIRST SECURITY BANK OF UTAH
                                Advice:
                                          By: Info:
SALT LAKE CITY.UT
BBK Corr :
                                A/C:
                                                   : etco3
□nter Bank:56
                                A/C:
                                                   Code:
Acet 'ith :57 :
                                A/C:
                                                   Code:
                               A/C:0
Benc :13ry :M :JOWAJO
                                                   Code:USDDDA01
MOSEPH P. WALDHOLTZ
                               Advice
                                          By: Info:
                               Bank:
Decails Of Payment:70:
                               Bank to Bank Information:72:
                             JOSEPH AND ENID WALDHOLTZ
JOSEPH AND ENID WALDHOLTZ
Details of Charges:71:BEN
                              Charge/fee :USD
Payment Type:FED RECEIVE
                                                11.00 By:BEN
Debit Advice:
Type Code: 1000
Prod Code: CTR
Org Dept:
Fee Code: FC
                BK OF NYC
              /ORG=DFORREST GREENE
FSI SEC BK UI SLC /CIR/BNE=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR FI
J9411141257100
, Credits
             Debits
                    Code:USDNOSTO1 A/C:0
199,989.00
DUE TO/DUE FROM FED NOSTRO
                               JOSEPH P. WALDHOLTZ
                               A/C:0
11/14/94 ASC:USD
                  Code:
                                                  Code: USDPANLO1
4/C:
 / / Amt:
                                                          11.00
                               Fee/ChargesUSD
                    Code:
                                                 Code:
```

Status: Completed FC modified

Crever Output : SNSERV Date: 94/11/14 Time: 14:26:30

Info:HOSTSEQ: 199411141025

Approve Receive: JEC Date: 94/11/14 Time: 14:26:25



EAST/WEST SECURITIES C Suite 993 120 Montgomery St. San Francisco, CA 94104 (415) 397-3400

FAX (415) 397-8073

/we

Member

Name Association of Sections Designated Designation Corporate Section Corporate Name of Section Corporate Name of Section Corporate Name of Section Name of Name of Section Name of Na

To: East/West Securities Co RE: Please Wire #275,000 to: 1st Security Bank of Utah Salt Lake City UT ABA#' Acct# Joseph P. Waldholtz # Enid G. Waldholtz

D. Forrest Greene

F001133

```
ENE IN DILS
               : 09-Jan-95 02:40 PM :
   0109B1G8154C004578 01091627 FT18 N 01091627 000449
  124000012 021000018 1000 FTJ9501091559500 275,000.00
  JK OF NYC
                  /ORG = DFORREST GREENE
  FST SEC BK UT SLC /CTR/BNF=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR F
  Source: FEDWI MT: 100 Session:
                                    Senders Reference:FT19501091559500
  Date:01/09/95 Time:14:29
                        Seq:00000
                                    Customer Reference:
  Priority:N Del Mon:
                       Unit:
                                    System Reference:
                       Value:01/09/95 Cur:USB Amount:
          : M :NEYONE
                                                            275,000.00
                                    Order Cust:300 :
  A/C://EW021000018
BANK OF NEW YORK
                       Cade:
                                    A/C:
                                    DPORREST/GREENEFST SEC BK UT SLC
  NEW YORK
Send Corr :53 :
                                    Order Bank:52
Snd/Rev Bk: A : FSBUUSSS
                                    A/C:/
FIRST SECURITY BANK OF UTAH
                                                          Code:
                                    Advice:
" SALT LAKE CITY.UT
BBK Corr
                                    A/C:
🖺 Inter Bank:56
                                                          Code:
                                    A/C:
M Acet With :57
                                                          Cade:
                                    A/C:
Beneticiary : H : 104010
                                                          Cade:
JOSEPH P. WALDHOLTZ
                                    A/C:
                                                          Code:USBBBBagi
                                    Advice:
                                               By:
                                                   Info:
                                    Bank:
 Details Of Payment:70:
                                    Bank to Bank Information:72: .
 ENID WALDHOLTZ X
                                    - OUR FTJ9501071559500
Details of Charges:71:BEN
 "ayment Type: PED RECEIVE
                                    Charge/fee :USD
  Dit Advice:
                                                          11.00 BY: BEN
 Type Code: 1000
 Prod Code: CIR
 org Dept:
 fee Code: FC
 3K OF NYC
                /ORG=DFORREST GREENS
 ST SEC BK UT SLC /CTR/BNE-JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- OUR ET
 1/0:0310310310
                                                gy Crodits
                      Code: USDNOSTO1 A/C:
 11/09/95 Amt:USB
                                                         Code:USDDDaoi
                          273,000.00 01/09/95 Amt:USD
 WE TO/DUE FROM FED NOSTRO
                                                            274,989.00
                                   JOSEPH P. WALDHOLTZ
 1/0:
                       Code:
                                   A/C:()
01/09/95 Amt:()58
                                                         Code: USDPANLO1
          Amt:
                                                                 11.00
                                   Fee/ChargesUSD
 :/C:
                      Cade:
                                   A/C:
  tatus: Completed
                  PC modified
  Server Output : SNSERV Date: 95/01/07 Time: 15:05:56
                  Info:HOSTSED: 199501090849
  Approve Receive :
                   TAD Date: 95/01/09 Time: 15:05:51
```

This letter will authorize the wire transfer of \$408,000.00 to

Ist Security Bank of Utah
Salt Lake City UT

ABA # For final credit to:

Joseph P. Waldholtz & End G. Waldhor

Acct#

Sincerely,

27/2/22eenl

D. Fornest Greene

Acct#

Order Bank; 32 A/C://A

A/C:

A/C:

A/C:

A/C:d

Bank:

Advices

Charge/fee :USD

A/C AME:USD

Fee/ChargesuSD

A/C:

Code:

Code:

Code:

Code:

Code: USDDDAOL

12.00 By:BEA

Code: USDPANLOI

Code:

12.00

Infa:

Info:

By:

Bank to Bank Information:72: - QUR FTJ9504110908700

NEW YORK Send Corr :53 Snd/Rcv Bk: A :FSBUUSSS FIRST SECURITY BANK OF UTAH SALT LAKE CITY.UT ŧ BBK Corr : Inter Bank:56 Ţ: Acct With :57 Benefictary : M : JOWAJO JOSEPH P. WALDHOLIZ Details Of Payment:70:

Details of Charges:71:8EN Payment Type: PED RECEIVE lebit Advice:

Type Code: 1000 Prod Code: CIR Org Dept: Fee Code: FC

Ď,

đ

/ORG=DFORREST GREENE BK OF NYC

FST SEC BK UT SLC /CTR/BNE=JOSEPH & ENID WALDHOLTZ X/AC-0511007551//BBI=- GUR E J9504110908700

Birded

Code:USDNOSTOL A/C:0 01E01E01CD:3\A Code:USDDDA01 04/11/95 Aut:USD 408.000.00 04/11/95 Ast:USD 407.988.00 DUE TO/DUE FROM FEB NOSTRO JOSEPH P HALDHOLTZ

A/C: Code:

1 1 Amt:

A/C: Cada:

FC modified Status: Completed

Server Output : SNSERV Date: 95/04/11 Time: 13:36:04

Info:HOSISEQ: 199304110786

Approve Receive: IJH Date: 95/04/11 Time: 13:35:54 Approve Receive: FEDSRV Date: 95/04/11 Time: 13:30:06 : FEDSRV Date: 95/04/11 Time: 13:30:06

Jutput 1 FR/910 Status:Campleted

Date: 95/04/11 Time: 13:36:05

附近的

EAST/WEST SECURITIE CO Suite 993 120 Montgomery St. San Francisco, CA 94104 (415) 397-3400

FAX (415) 397-8073

Ventar

Neurosal Assertation of Securical Designation Constitution Cons

To East/West Securities 7/18/95 Wire \$13,000 from my account t

Riggs Nat'l Benk Washington DC

ABA#

For credit to Acct # Antique Contemporary Leasing

Sincerely, Different Science D. Forrest Greene Acct#

F001131

70: East/ West Decu and U.S. Clearing Corp. Please wire money as follows; Wire \$250,000,000 to: Nations Bank Washington DC ABA TORREST For credit to Acct # Acct Joseph P. or Enid Waldholtz and Wire \$7426.00 Ocean City Home Savings & Loan Ocean City NJ For credit to: Acct# Branch Grace Realty Co.

F001130 X Donest Greene

Oct. 12,1785

East/West Securities 6

Wire 308000 from

Just Security Such 17th Solt Bake City, Utal
ASA # Williams To a count to the security of the

Simeny District Grand



Gregory G. Skordas (3865) WATKISS DUNNING & WATKISS, P.C. Broadway Centre, Suite 800 111 East Broadway Salt Lake City, Utah 84111-2304 Telephone: (801) 530-1500

Facsimile: (801) 530-1520 Attorneys for Defendant

In The Third Judicial District Court Salt Lake County, State Of Utah

D. FORREST GREENE,

Plaintiff.

JOSEPH P. WALDHOLTZ,

Defendant.

ANSWER

Civil No. 960903017CV

Judge Anne M. Stirba

The Defendant, Joseph P. Waldholtz, by and through his attorney Gregory G. Skordas and pursuant to Rule 12 of Utah Rules of Civil Procedure hereby responds to the Plaintiff's Complaint on file herein and alleges as follows:

- Defendant states that he is without knowledge sufficient to admit or deny the allegations contained in paragraph 1 of the Plaintiff's Complaint, and therefore denies the same.
- Defendant states that he is presently residing in Pennsylvania but denies the remaining allegations contained in paragraph 2 of Plaintiff's Complaint.
 - Defendant denies the allegations contained in paragraph 3 of Plaintiff's Complaint.
 - Defendant denies the allegations contained in paragraph 4 of Plaintiff's Complaint.

- 5. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.
- 6. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.
- 7. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.
- 8. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him

regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.

- 9. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.
- 10. Defendant presently refuses to respond to the allegations in this paragraph of Plaintiff's Complaint and invokes his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah on the ground that any statement made by him regarding this matter may tend to incriminate him in those criminal proceedings and investigations presently pending against him.

FIRST AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the person of the Defendant. The acts complained of herein did not occur in the jurisdiction of this Court.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to join an indispensable party, to wit Enid Greene.

WHEREFORE, having fully answered Plaintiff's Complaint on file herein Defendant respectfully requests that the same be dismissed with prejudice and that he receive his costs for defending this action.

DATED this _____ day of June, 1996.

WATKISS DUNNING & WATKISS, P.C.

Citegory G. Skordas

CERTIFICATE OF SERVICE

I hereby certify that on the How day of June, 1996, I hand delivered a true and correct copy of the foregoing ANSWER, to the following:

Brent V. Manning Holme Roberts & Owen 111 East Broadway, Suite 1100 Salt Lake City, UT 84111

Watkiss Dunning & Watkiss, P.C



EY______

HOLME ROBERTS & OWEN LLC Brent V. Manning #2075 111 East Broadway, Suite 1100 Salt Lake City, Utah 84111 Telephone: (801) 521-5800

Attorneys for Plaintiff, D. Forrest Greene

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

D. FORREST GREENE,))
Plaintiff,) MEMORANDUM) IN SUPPORT OF
v.	MOTION FOR SUMMARY JUDGMENT
JOSEPH P. WALDHOLTZ,) Civil No. 960903017
Defendant.) Judge Anne M. Stirba

Pursuant to Rule 4-501(2)(a), plaintiff D. Forrest Greene submits the following Memorandum in Support of his Motion for Summary Judgment. Plaintiff respectfully requests that the Court enter Summary Judgment in his favor because there is no genuine issue of material fact and plaintiff is entitled to judgment as a matter of law.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff is presently a resident of Salt Lake County, State of Utah. Affidavit of D. Forrest Greene ("Greene Affidavit") § 1.

Œ,

- 2. Defendant Joseph P. Waldholtz ("Waldholtz") was a resident of Pennsylvania at the time the Complaint was filed. See Answer ¶ 2.
- 3. Venue in this district is appropriate since plaintiff is a resident of Salt Lake County and all or part of this cause of action arose in this County.
- 4. This Court has jurisdiction over defendant pursuant to Utah Code Ann. § 78-27-24 (1995) because defendant was a resident of the State of Utah at the time this cause of action arose. Defendant conducted business in the State of Utah from which this cause of action arose and defendant caused injury to plaintiff in Utah in part during the time plaintiff was a resident of Utah.
- 5. Beginning on January 21, 1994 and continuing through October 12, 1995, plaintiff loaned to defendant, or paid obligations of the defendant at defendant's request, amounts totaling \$3.987,426.00 (the "Loan Amount"). A summary of the checks and wire transfers from plaintiff to, or for the benefit of Waldholtz, is attached to the Complaint as Exhibit "A." Documents evidencing each transfer are attached to the Complaint as Exhibit "B." Greene Affidavit ¶ 2-8.
- 6. At the time the plaintiff loaned money to, or paid obligations for the benefit of defendant, defendant was married to plaintiff's daughter and occupied a position of trust and confidence with plaintiff giving rise to fiduciary duties by defendant to plaintiff. Greene Affidavit ¶
- 7. Defendant exploited his close family relationship, his position of trust and confidence and breached his fiduciary duty to plaintiff by inducing him to advance the Loan Amount to

defendant based upon, but not limited to, the following material misrepresentations, all of which were false when made:

- a. That he was the beneficiary of a Waldholtz Family Trust which had a value of approximately \$325 million (with substantial monthly income for his benefit).
- b. That the money from the Waldholtz Family Trust was temporarily unavailable to Waldholtz but that he would shortly repay all borrowed funds with money he would receive from the Waldholtz Family Trust.
- c. That his mother had been the victim of a "telemarketing scheme" which caused her to "overspend" or overdraft one or more of her accounts. Money was not available from the Waldholtz Family Trust to rectify this because it was "tied up" and due to his parents' divorce, his mother was barred from receiving trust funds. The money borrowed in January and February 1994 would be used to discharge these obligations;
- d. That his mother had been duped by a con-man who was then in jail and that for the same reasons this too could not then be rectified with the Waldholtz Family Trust money and that the amount borrowed would be used to discharge these obligations.

 Greene Affidavit ¶¶ 10-12.
- 8. In addition, at approximately the time of Waldholtz's marriage to Mr. Greene's daughter, Enid Greene, (August 1993), Mr. Waldholtz purported to have given Enid Greene a gift of approximately \$5 million which gift in fact had not occurred. Greene Affidavit ¶¶ 11-12.

- 9. Waldholtz made the above misrepresentations repeatedly during the period from

 January 1994 through October 12, 1995. These misrepresentations were made in person in Salt Lake

 City and by telephone from the defendant in Washington, D.C. and/or Salt Lake City to the plaintiff.
- 10. Plaintiff relied on the truthfulness of the foregoing representations when he loaned defendant the Loan Amount. Had plaintiff known that the foregoing representations were false, that Waldholtz did not intend to use the money for the purpose stated and that Waldholtz had no ability to repay the money plaintiff loaned to him, plaintiff would never have loaned any money to Waldholtz. Greene Affidavit ¶ 12.
- 11. As a result of Waldholtz's fraudulent misrepresentations and breach of fiduciary duty plaintiff has been damaged in the amount of \$3,987.426.00. Greene Affidavit ¶ 8, 12.
- 12. Waldholtz has refused to respond to allegations of fraud and breach of fiduciary duty, instead asserting his rights under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of Utah. Answer ¶ 5-10.

INTRODUCTION

Defendant abused his fiduciary relationship as plaintiff's former son-in-law and fraudulently induced plaintiff D. Forrest Greene to advance him \$3,987,426.00 from January 21, 1994 through October 12, 1995. Mr. Greene trusted defendant and materially relied on defendant's misrepresentation of the purpose of the loans and his ability to repay them. Defendant does not deny these allegations, but refuses to respond, claiming his rights under the Fifth Amendment of the United States Constitution on the ground that any statement made by him-regarding this matter may tend to

incriminate him in the criminal proceedings and investigations presently pending against him. His refusal, however, does not preclude this Court from considering the clear evidence of defendant's misrepresentation and fraud. Defendant's refusal to respond gives rise to an adverse inference of liability. The Court should grant plaintiff an order of summary judgment based on the adverse inference from defendant's refusal to respond and the uncontested evidence of fraudulent misrepresentation and breach of fiduciary duty.

ARGUMENT

I. This Court has Proper Jurisdiction Over the Defendant

Defendant's answer contests jurisdiction, however, this Court has jurisdiction under the Utah Long Arm Statute. The Utah Code provides broad jurisdiction "to ensure maximum protection to citizens of this state," "deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states." Utah Code Ann. § 78-27-22 (1992). Utah courts have jurisdiction over claims arising from "the transaction of any business within this state" or "the causing of any injury within this state whether tortious or by breach of warranty." Utah Code Ann. § 78-27-24(1), (3) (1995). Each of these provisions authorizes jurisdiction over the defendant.

Defendant transacted business within Utah from which this cause of action arose. From January 21, 1994 through October 12, 1995, defendant visited the plaintiff in Salt Lake City and made phone calls to the plaintiff in San Francisco from Salt Lake City. During these calls and visits. he committed the fraudulent misrepresentations listed in "Statement of Undisputed Material Facts" ¶ 7 to induce the plaintiff to advance him the Loan Amount. Greene Affidavit ¶¶ 10-11.

Defendant also tortiously caused injury in this state. The defendant fraudulently misrepresented the facts listed in "Statement of Undisputed Material Facts" ¶ 7 to the plaintiff in Salt Lake in person. Greene Affidavit ¶ 10-12. Since January 1, 1995 plaintiff has been a resident of Salt Lake City. Greene Affidavit ¶ 1, and has been tortiously damaged by defendant's fraudulent misrepresentations and breach of fiduciary duty in the amount of \$3,987,426.00. See Greene

Affidavit ¶¶ 2, 8. Telephone calls initiated by an out-of-state defendant and causing tortious injury in this state alone have been found to be sufficient basis for jurisdiction and meet the requirements of due process. See Berrett v. Life Ins. Co. of the Southwest, 623 F.Supp. 946, 948-51 (D. Utah 1985). Here, the defendant not only committed fraudulent misrepresentation and breach of fiduciary duty in person in Utah, but also while he lived in or visited Utah. Clearly, Utah courts have sufficient basis for jurisdiction over the defendant.

Venue in this district is also appropriate because all or part of this cause of action arose in this County, as described above, and because plaintiff is a resident of Salt Lake County. Green Affidavit ¶ 1; see Utah Code Ann. § 78-13-7 (1992). The Utah Code provides that venue is appropriate "in the county in which the cause of action arises" or, "[i]f none of the defendants resides in this state, such action may be commenced and tried in any county which the plaintiff may designate in his complaint." Utah Code Ann. § 78-13-7 (1992). As defendant was a resident of Pennsylvania at the time the Complaint was filed, "Statement of Undisputed Material Facts" ¶ 2, venue is appropriate in Salt Lake both because all or part of the events giving rise to the cause of action happened in Salt Lake County and because plaintiff designated Salt Lake County in his Complaint. Complaint ¶ 3; see Utah Code Ann. § 78-13-7 (1992).

II. Defendant Committed Fraudulent Misrepresentation and Breached his Fiduciary Duty in Obtaining Advances from Plaintiff

The facts establishing defendant's fraudulent misrepresentation and breach of fiduciary duty in obtaining \$3,987,426.00 from plaintiff are uncontested. See "Statement of Undisputed Material Facts" ¶¶ 5-12. As there is no genuine issue of material fact, summary judgment should be ordered

where plaintiff is entitled to judgment as a matter of law. Utah R. Civ. P. 56. Based on these undisputed facts, plaintiff is entitled to judgment as a matter of law on defendant's breach of fiduciary duty and fraud.

Defendant's fiduciary duty arose from the relationship of trust he enjoyed with plaintiff as plaintiff's son-in-law at the time of the misrepresentation and fraud. The Utah Supreme Court has explained that a fiduciary or confidential relationship may be created "by circumstances where equity will imply a higher duty in a relationship because the trusting party has been induced to relax the care and vigilance he would ordinarily exercise." Hal Taylor Associates v. Unionamerica, Inc., 657 P.2d 743, 749 (Utah 1982); see also First Security Bank, N.A. v. Banberry Development Corp., 786 P.2d 1326, 1333 (Utah 1990). In loaning money to his trusted son-in-law, the plaintiff did not exercise the care and vigilance he would have in making a loan to a stranger. See Greene Affidavit ¶¶ 9, 12.

Defendant took advantage of plaintiff's trust and confidence, their family relationship, and plaintiff's ignorance of defendant's financial affairs in inducing plaintiff to make advances based on material misrepresentations. See Greene Affidavit ¶¶ 9-12. Defendant thus abused plaintiff's trust and confidence and breached his fiduciary duty.

In addition to breaching his fiduciary duty, the defendant committed fraud. The Utah Supreme Court has set forth nine elements of fraud:

(1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor either (a) knew to be false or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other part to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and

was thereby induced to act (9) to that party's injury and damages. (citations omitted)

Educators Mut. Ins. Ass'n v. Allied Property and Casualty Ins. Co., 890 P.2d 1029, 1032 (Utah 1995). Defendant made the false representations concerning the material facts listed in "Statement of Undisputed Material Facts" ¶¶ 5-12 with a knowledge of their falsity in order to induce plaintiff to advance him money and pay off his obligations. See Greene Affidavit ¶¶ 10-11. Plaintiff, acting in ignorance of the falsity of the claims, materially and detrimentally relied on the defendant's misrepresentations and advanced him an amount not less than \$3,987,426.00. See Greene Affidavit ¶¶ 2, 8, 12. Defendant's conduct thus meets all the required elements of fraud and breach of fiduciary duty.

III. The Court Should Draw an Adverse Inference from Defendant's Refusal to Testify and Enter Summary Judgment in Favor of Plaintiff and Against Defendant

Rather than respond to plaintiff's allegations of fraud and breach of fiduciary duty, defendant has invoked his rights under the Fifth Amendment to the United States Constitution and refused to respond to Mr. Greene's substantive allegations. The Court should draw an adverse inference from defendant's refusal to testify. Although defendant has a right to invoke the Fifth Amendment and refuse to respond on the grounds that his statement may tend to incriminate him in criminal proceedings and investigations presently pending against him, such refusal entitles this Court to draw an adverse inference from his refusal to testify.

In <u>Baxter v. Palmigiano</u>, 425 U.S. 308 (1976), a prison inmate refused to testify in a prison disciplinary proceeding. The inmate's refusal, together with other evidence, led to punitive sanctions

by the prison's Disciplinary Board. On appeal, the Supreme Court upheld "the prevailing rule that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." 425 U.S. at 318.

Thus, although defendant in this civil case can claim the Fifth Amendment and refuse to deny his acts of misrepresentation and breach of fiduciary duty, he cannot escape the adverse inference of liability that his refusal entails.

The Utah federal district court clearly explained the principle of adverse inference in Hughes

Tool Co. v. Meier, 489 F.Supp. 354 (D. Utah 1977). In Meier, the defendant invoked the Fifth

Amendment to justify his refusal to provide a court-ordered accounting. The court granted a final judgment against the defendant, holding:

The adverse inference that may be drawn under these circumstances, from [defendant's] failure to answer, strengthens the probative value of plaintiff's evidence, without putting words in defendant's mouth in violation of his Fifth Amendment rights.

489 F.Supp. at 374. The court further explained that to deny a final judgment in such a case would "produce entirely unacceptable results, in that a plaintiff in a civil matter could be deprived of his right to a judgment whenever a defendant invoked the Fifth Amendment privilege in an action where he has the burden to answer." 489 F.Supp. at 375.

^{&#}x27;The Tenth Circuit has described the effect of adverse inference in this way: "The individual petitioners unquestionably may assert a Fifth Amendment privilege in this civil case and refuse to reveal information properly subject to the privilege, in which event they may have to accept certain bad consequences that flow from that action." Mid-America's Process Service v. Ellison, 767 F.2d 684, 686 (10th Cir. 1985) (citations omitted).

The Utah Supreme Court has held that an adverse inference from defendant's invocation of the Fifth Amendment, along with other evidence, is sufficient basis to grant summary judgment. In Gerard v. Young, 432 P.2d 343 (Utah 1967), summary judgment was awarded to the plaintiff when the defendant originally denied the allegations of illegal gambling but then claimed the Fifth Amendment and refused to answer in a deposition. The Supreme Court has cited Gerard for the proposition that

where, on a motion for summary judgment, a plaintiff establishes through independent, uncontroverted evidence that he is entitled to summary judgment, a defendant cannot avoid a summary judgment by claiming the privilege against self-incrimination.

First Federal Savings & Loan Association v. Schamanek, 684 P.2d 1257, 1268 (Utah 1984).

Here, plaintiff has provided uncontroverted evidence of defendant's repeated misrepresentations and breaches of fiduciary duty. This evidence is strengthened by the adverse inference of liability from defendant's refusal to answer. Based on the undisputed evidence, this Court should, as a matter of law, vindicate plaintiff's right to a judgment and grant summary judgment for the plaintiff.

IV. Enid Greene Is Not an Indispensable Party

Defendant alleges that plaintiff's Complaint failed to join Enid Greene as an indispensable party, but Ms. Greene is neither necessary nor indispensable to this action. See Answer, 3d Affirmative Defense; Utah R. Civ. P. 19. Determining indispensability under Rule 19 requires a two-step process: first assessing whether the party is necessary under 19(a) and then considering the question of indispensability raised in 19(b). See Utah R. Civ. P. 19; Landes v. Capital City Bank, 795 P.2d 1127, 1130 (Utah 1990).

Rule 19(a) provides two general factors for determining whether a party is necessary:

(1) if in [the party's] absence complete relief cannot be accorded among those already parties, or (2) [the party] claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Utah R. Civ. P. 19. The Utah Supreme Court summarized Rule 19(a) in defining a necessary party as "one whose presence is required for a full and fair determination of his rights as well as of the rights of the other parties to the suit." Cowen and Co. v. Atlas Stock Transfer Co., 695 P.2d 109, 114 (Utah 1984) (citations omitted).

In this action for defendant's fraud and breach of fiduciary duty, the interest of Ms. Greene is not implicated, nor is her presence necessary to determine the rights of plaintiff and defendant.

Plaintiff can obtain complete relief for defendant's fraud and breach of duty from defendant without joining Ms. Greene. Ms. Greene's absence will not prejudice her nor any of the parties to the action.²

As Ms. Greene is not a necessary party, further analysis is unnecessary. "Only if we first find the [third party] to be a necessary party can we properly proceed to the 19(b) question of indispensability." Landes v. Capital City Bank, 795 P.2d 1127, 1130 (Utah 1990). Defendant's

7

²Defendant's allegation that Ms. Greene is an indispensable party is completely baffling. Plaintiff is here alleging defendant's tortious acts. Even if Ms. Greene were a joint tortfeasor, she would only be a permissive party, not a necessary one. See Fed. R. Civ. P. 19 advisory committee's note; Jean F. Rydstrom, Annotation, Who Must Be Joined in Action as Person "Needed for Just Adjudication" Under Rule 19(a). Federal Rules of Civil Procedure 22 A.L.R. Fed. 765, 836-37 § 17 (1975).

allegation that Ms. Greene is an indispensable party is without merit, as she is not even a necessary party to the action.

CONCLUSION

This Court has proper jurisdiction over the defendant through his transaction of business and creation of tortious injury in Utah. Defendant committed breach of fiduciary duty and fraud in inducing plaintiff, his father-in-law, to advance him \$3,987,426.00. Defendant's failure to deny these allegations and invocation of the Fifth Amendment give rise to an adverse inference of his liability.

Based on the evidence of fraud and breach of fiduciary duty combined with this adverse inference, plaintiff respectfully requests that the Court enter an order of Summary Judgment in favor of plaintiff.

DATED this 27 day of June, 1996.

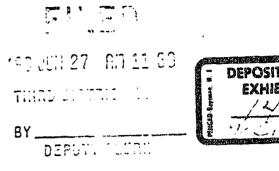
HOLME ROBERTS & OWEN LLC

Brent V. Manning

Attorneys for plaintiff D. Forrest Greene

HOLME ROBERTS & OWEN LLC Brent V. Manning #2075 111 East Broadway, Suite 1100 Salt Lake City, Utah 84111 Telephone: 521-5800

Attorneys for Plaintiff, D. Forrest Greene



IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

D. FORREST GREENE,))		
Plaintiff,) AFFIDAVIT OF) D. FORREST GREE	ENE	
v.)		
JOSEPH P. WALDHOLTZ,) Civil No. 96090301	7	
Defendant)		
) Judge Anne M. Stirb	oa	
STATE OF UTAH)		
COUNTY OF SALT LAKE	: ss.)		
	,		

- I, D. Forrest Greene, of legal age, having been duly sworn, and having personal knowledge of the facts asserted herein, certify and state as follows:
 - 1. I am now a resident of Salt Lake County. State of Utah.
- 2. From January 21, 1994 through October 12, 1995. I made loans to Joseph P. Waldholtz and paid his obligations at his request through checks and wire transfers

j

in the total amount of not less than \$3,987,426.00, as summarized in Complaint Exhibit "A."

Complaint Exhibit "A" is an accurate summary of my advances to or for the benefit of

Waldholtz, with the exception that the transfer on 7/7/94 of \$10,000.00 to Malcolm Shannon

was through a personal check, not a wire transfer as listed.

- 3. True and correct copies of checks and documents authorizing or evidencing wire transfers I made to Joseph P. Waldholtz or for his benefit are compiled in .

 Complaint Exhibit "B."
- 4. I authenticate the handwriting and/or signature as mine in the following documents in Complaint Exhibit "B": control numbers F001153, F001146, F001145.
 F001144, F001143, F001142, F001140, F001139, F001138, F001137, F001136, F001135, F001134, F001133, F001132, F001131, F001130, and F001129 and the checks dated 7/7/94 (Wells Fargo Bank, \$10,000) and 8/25/94 (Wells Fargo Bank, \$55,000).
- 5. I authenticate the following wire transfer forms, contained in Complaint Exhibit "B," as authentic business records which I received from the indicated brokerage confirming or authorizing the transfer of funds: control numbers F001152, F001144, F001143, F001142, F001139.
- 6. The wire transfer invoice records reflect charges to my account in the amounts indicated on the record: these invoices are included in Complaint Exhibit "B" immediately following documents with control numbers F001144 (invoice dated 7/7/94), F001143 (invoice dated 8/8/94), F001142 (invoice dated 9/2/94), F001139 (invoices dated

9/19/94 and 10/18/94), F001135 (invoice dated 11/8/94), F001134 (invoice dated 11/14/94), F001133 (invoice dated 1/9/95), and F001132 (invoice dated 4/11/95).

- 7. Funds were removed from my accounts pursuant to the following requests for wire transfers, copied in Complaint Exhibit "B": control numbers F001153, F001145, F001144, F001143, F001142, F001139, F001138, F001137, F001136, F001135, F001134, F001133, F001132, F001131, F001130, and F001129.
- 8. As a result of and as reflected by the checks, authorizations, invoices, and requests identified in ¶¶ 4-7, a total of \$3,987,426.00 was transferred from my accounts to accounts designated by defendant Joseph P. Waldholtz.
- 9. During this period from January 21, 1994 through October 12, 1995, Joseph P. Waldholtz was married to my daughter, Enid Greene, and I trusted him as a member of the family.
- 10. From January 1994 through October 12, 1995, Joseph P. Waldholtz repeatedly called me from Washington, D.C. and/or Salt Lake City, and visited me in Salt Lake City. During these calls and visits he persuaded me to loan him money and pay his obligations based on the following misrepresentations, among others:
- a. That he was the beneficiary of a Waldholtz Family Trust worth approximately \$325 million and that he received a substantial monthly income from this trust.

- b. That he was temporarily unable to have access to funds from the Waldholtz Family Trust due to litigation with other family members.
- c. That he would soon repay all of the money he borrowed from me with funds he would receive from the Waldholtz Family Trust.
- That he would use the money he borrowed in January and February 1994 to assist his mother, who overspent one of her accounts as a victim of a telemarketing scheme, and that the Waldholtz Family Trust could not be used to help his mother because it was tied up and as a result of his parents' divorce, his mother was barred from receiving trust funds. The money borrowed in January and February 1994 would be used to discharge these obligations.
- e. That he would use the money he borrowed to help his mother when she was tricked by a convicted con-man, because for the above reasons the Waldholtz Family Trust could not be used to assist her.
- In addition, I learned either from Joe Waldholtz or from my daughter Enid that Joe Waldholtz had purportedly given her a gift of approximately \$5 million, approximately at the time of their marriage.
- 12. None of the claims listed in paragraphs 10 and 11 were true at the time they were communicated to me. I trusted Joe Waldholtz and did not know that he was lying to me and to my daughter during that period. Had it not been for the close family relationship we then enjoyed. I would not have relied on Waldholtz's statements, without

outside verification. If I had known that Joseph P. Waldholtz was lying about these claims, about why he wanted the money, or about his ability to repay the loans. I would not have advanced the money I did.

Executed this 26 day of June, 1996, at Salt Lake City, Utah.

D. Forrest Greene

SUBSCRIBED AND SWORN TO before me this 2 day of June, 1996.

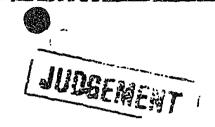
Notary Public

Residing at:

My Commission Expires:

Sept. 5, 1999







of JUL 25 of

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

D. FORREST GREENE,	_)	,
	j j	PROPOSED ORDER GRANTING
Plaintiff,)	SUMMARY JUDGMENT IN FAVOR
)	OF PLAINTIFF AND AGAINST
v.)	DEFENDANT
)	2209186
JOSEPH P. WALDHOLTZ,)	Civil No. 960903017 7-26-96
)	1-06-46
Defendant.)	Judge Anne M. Stirba 9:08 AM
)	

This matter came before the Court on plaintiff's Motion for Summary Judgment which was filed and served by hand delivery on June 27, 1996. Defendant Joseph P. Waldholtz failed to file any opposition to said Motion. The Court, after having reviewed the pleadings, plaintiff's Motion and supporting Affidavit, hereby enters its Order granting summary judgment in favor of plaintiff and against defendant in the amount of \$3,987,426.00, plus plaintiff's costs of suit herein.

DATED this 25 day of July, 1996.

Honorable Anne M. Stirba Judge, Third District Court

#27606

i

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand delivered the foregoing Proposed Order Granting

Summary Judgment in Favor of Plaintiff and Against Defendant, this 18th day of July, 1996, to:

Gregory G. Skordas
WATKISS DUNNING & WATKISS, P.C.
Broadway Centre, Suite 800
111 East Broadway
Salt Lake City, UT 84111

Famel Johnson

#27606

Ü

: الحدد الحددة

ڷۣ

THE BASHLYCTON POST Waldholtz Lost Job Over Finances in '92'

Sources Say Husband of Congresswoman Was Fired by RNC Member

sy Serve F. Kovaceski and Thomas (icach

lusered Waldhoirs, the messing hisband of Rap. Esta Waldholts (E Utah), was bred as a personal aide to **Вериниска Матрові Сопомпечнию** an Elize H. Hillman in 1992 over a asti erom gainreappo ernesth S100,000 of Hillman's own money that he allegarily spent to finance a lavish lifescole, unitalizate spills to his wile-lu-te. someting to startes char IN THE SITUATION.

Mesnetus, s toruer campa was and yesterday that Enid Weldboiss was confronted by stall memberr about financial erregules name during her 1994 hid for Congress, but that the acted only star the school sought exceeds help from once to patitions landers.

"Fox East to say also had no knowle cibre in dairymment at best," said Street Faggers, who less the company over the immeral decrepancies. She was warned there was a substantial Poteral Election Commission | prob-

Former campaign workers said their payersocia and those of paid oneretries remarky bounced and they had to complish to Joseph Waldenber who was unmerce, in gre their miss-

The Weights money mass, which came to national attention this was has ocen a long-rimoing anga in Utah and appears to have chapped away at the congressments once forms his political support. Emilese news turnes-on topics carging from the prosperious infrastrus of cash then her pointing comments the passes were the passes regree of GOP leaders. There is no property transferred way per over perrest has been isseed for Joseph Waldhote who disappeared but Samutay from Nathanal Airport. Has accome to and commons stead array a segundy and क्रिक स्थाप क्रिकेट स्थापित के हैं। इस विकास Tuesday the congresswoman filed for

"I but of people are at the end." and Rives behaviours, executive cares for or the Utah Republican Porty. "I he only thing that can possibly save her is that possile with even worked or her hiju ito idea the problem was . اجهاه حفال

Reformann and others and Waldinsite creek make a creatible capies non if the to going to selvage her once change postucal career. "Everythe 6 holding their breath againing

" HUNDER I COME LEGION 100 DIAMY

poople who are putting mainty use here

מי צמבש פשוב בזמונקום שיון וכדיויים trans the source of \$1.8 zellion in campaign mager that haid for the last-migute about their bits that prouchied East Waldbotts mrn ordice. Justice Department scores said the has tota them per husband classed the fumin came from a local swee of its seis, as which he green Proof Waldhardra's fariber a \$5 million creat rund that contained mostly real cotate ne in enchange for sucher. loseph Walsholtz's Lating, however, has west that on sects truet trans entened.

In a statement usuad by Enid Waldholts youterday, the said she ruly believed the mover she had commission to har cannage was m compliance with the tree. "My build escitations representations of the period period

"A lot of people are at the end. The only thing that can possibly save Rep. Enid Woldholtz is that people who even worked for her had no idea the problem was this deep."

— Russ Bekennen, Dush Republican Party

made to me by Joe Waldanks research me the tomity trust the gift he got ner when we exerted, and our waypoints from conserving of property in Paramytenia," the statement mid.

Joseph Waldhaltz, 32. is also the making of a great jury investigation um an alleged check-bring schools in which he wryte cheeks for \$228,000 more than his account bold. It is still unches how much if saything the congressional keep singli but him band's desirem inconcert destroys

An atterney representing Joseph Waldhoitz s tutner said in 20 missivico vascerday that in 1993 relatives discovered that the younger Waldhultz had taken out a loan of about \$100,000 from a Physiotraph Mank by uning the home of his woldy grandmother as constant. The attorney. Truco S. Celman, and the family susnects that hascun Waldinger may have

OU BESTERN VO BUSON ISSUEDED DOUBLE DO 32 CONTINUES 3 DIMENT OF CHICA DIEDcrues that he does not own.

reen rased remounisment adors the man because the has bee extre and is old and suttiming from Alchemyer's journment." Crimen said. The ev-Louis Kultonians, Joseph Waldhoots e father and a consist have grown on 000.0008 and was rock bearer that the grandmother gave joseph Wakiladaz in merci over the past 10 years. He has reportedly referred to gree an accommence of the feeds.

A sucree saci restenday that during his them years on a personal sale to l'Eleman con et l'emperiones sons mineral Republicans and the wife of bilionise investa Heavy L Hieron Jeseph Waldboler altegrally spent mere 1222, \$100.000 of her meney on speciare based antes, first-chap air as tickate and brink model, as tool m present for the wilescote, Reid. riling (breeze and other gills. :

A molecular for the careta worsen did out return code sessons CHICAGO PARTIE

More of the especial were for the while Joseph Weldhold was unveil to Republicus National Committee meetings and other COP events screen the manage, Signs in course come of Hillman's finances, les son the to comment the spenning freezher. the source sets.

It was a present that bearings and reed over the less two years he was with her; by the end there was no has ger any trans of considerate Core. end one of the section, who solute per to be identified. The constraint ments of her frences and concentral the specifies. He put should be perv

It was unchest, bossever, boss Rift! men discovered the alleged financei o spierouth ferminated and apply opdel not take ear oction beyond friend Waldendard ...

in a prespect structure preservicy. Hillman and of the everall for sego. 'I believe that the Waldholks matter is within the Waldrobes busily and the appreciance of an oneone carmal investigation makes it transferenate for the commerc. A Halens ade. John Denny, said that he was am autheresed to seem one method senso-

in Pirtabergn vesterday, Joseph Waldholez's faunty ticht a mens conference calling on him to come torward. Steven Steamper, his comun and one or the guardiese of their grandmouner's estate, said, "Il you can bear tem interfere, Joe, please withe on pack. We miss you."



MEMORANDUM

TO:

Elsie Hillman

FROM:

Joe Waldholtz

DATE:

April 25, 1991

RE:

Thom Smith

I contributed \$300 to the Committee to Elect Thom Smith. He would like some advice from you!

JPW:mm

A:\ELSIE2.MEM



MEMORANDUM

TO:

Hugh Joyce

FROM:

Joe Waldholtz

DATE:

April 11, 1991

RE:

Westin Wm. Penn Hotel

Mrs. Hillman owes \$1,807.70. She bought a gift certificate for someone, several lunches (room service and the Terrace Room), and had one event. You can forward the check to me and I will take care of it. Thanks.

It should be made payable to Westin Wm. Hotel.

JPW:mm

A:\EHHBILLS.2HJ

Search Result

Rank(R) 4 of 5

Database ALLNEWS

Citation 12/10/95 SLTR A19 12/10/95 Salt Lake Trib. A19 1995 WL 10920838

عرات أمنت

đ:

(Publication page references are not available for this document.)

The Salt Lake Tribune Copyright 1995

Sunday, December 10, 1995

Nation-World

Utah GOP Leader Says Joe Took From the Party, Too Anne Wilson THE SALT LAKE TRIBUNE

On the eve of Enid Waldholtz's tell-all appearance in Salt Lake City, Utah Republican party officials announced they, too, are victims of the congresswoman's husband, Joe Waldholtz.

Party leaders alleged Saturday that Joe cashed \$1,465 in checks, written to the party by donors in June 1993, and deposited them in his personal bank account.

Party chairman Stan Parrish said he only learned of the alleged Theft Friday afternoon after being told of the checks by one of Enid's Washington, D.C., lawyers.

The lawyer, Brett Rappel, works for the law firm that hired the Eddie Mahe Co., a political consulting firm that is coordinating damage control for the congresswoman.

Enid is scheduled to make a public appearance Monday in Salt Lake City to give Utahns a "full accounting" of the tangled family finances that have prompted federal investigations of her personal and campaign finances.

Parrish said he decided to share the new information about Joe just two days before Enid's public accounting because it was his

"Rather than have this come up in an investigation, I have a responsibility to make this public." Parrish said.

Added Dave Hansen, who was executive director of the party before Joe became acting director in April 1993: "People who donate need to be reassured that the Republican Party does account for the money that comes in."

Attempts to contact Kappel and his partner, Charles Roistacher, on Saturday were unsuccessful. Joe's attorney, Harvey Sernovitz, of Philadelphia, did not return a message left at his home.

Copr. (C) West 1998 No Claim to Orig. U.S. Govt. Works



2

12/10/95 SLTR A19 (Publication page references are not available for this document.)

Attorney Kevin Anderson, who Parrish called the party's legal counsel, said he did not know whether Enid's attorneys had notified Utah law-enforcement authorities of the alleged theft. He said he planned to report the missing money on Monday. The party may also sue Joe civilly, he said.

Joe was acting executive director of the party until summer 1993, when he left to join Enid's campaign for Congress. Party secretary Pam Hendricksen said there was no indication Joe had money problems lifat the time party leaders voted to make him acting director.

"The people who were there knew him because he'd been around as a volunteer," Hendricksen said.

Parrish said the 14 checks ranged in amount from \$30 to \$350, and were likely collected for a social event, such as a dinner.

The contributions did not show up in an annual external audit of party finances, which means the checks never made it to party headquarters, Parrish said.

* The money would not have been missed because donors are not given preceipts at social functions. And revenues raised by fund-raisers do prot always match expenses because some people who attend do not pay.

"If one of our employees stole one of these checks . . . you'd never know," said Parrish, who acknowledged that party leaders may have been too trusting in the past.

"There's always an element of trust. So now we have a new dimension to this fund-raising social event. Maybe we need to rely less on trust and more on fiscal control," he said.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

Tim Kelly/The Salt Lake Tribune GOP leader Stan
Parrish says at a news conference Saturday that Joe Waldholtz took
checks made out to the Utah GOP. He said he found out about the
checks through Enid's lawyers.

---- INDEX REFERENCES ----

KEY WORDS:

UT CONGRESSIONAL DELEGATION; SCANDALS; POLITICS-POLITICIANS

Word Count: 505 12/10/95 SLTR A19 END OF DOCUMENT

Copr. (C) West 1998 No Claim to Orig. U.S. Govt. Works

